IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 655

JAMES D. HODGSON, Secretary of Labor,
Petitioner,

—v.—

LOCAL UNION 6799, United Steelworkers of America, AFL-CIO, et al.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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RELEVANT DOCKET ENTRIES

Date	Filings—Proceedings
	No. 68-326-EC in the United States District Court for the Central District of California
1968	
February 29	Complaint under Labor Management Reporting and Disclosure Act, filed
March 27	Answer of Local Union 6799 of the United Steelworkers of America, filed
	Answer of United Steelworkers of America, filed
March 28	Motion to interevene, filed Order granting Motion to intervene, filed
November 25	Pre-trial conference held
	Pre-trial conference order, filed
December 27	Defendant's Motion for Summary Judgment, filed
1969	
January 15	Plaintiff's opposition to Defendant's Motion for Summary Judgment, filed
January 27	Hearing on Motion for Summary Judgment; Court denied Motion
February 3	Order of Court denying Motion for Summary Judgment, Filed
March 25	Trial
March 26	Trial
April 21	Trial
April 28	Order finding in favor of plaintiff and against defendant, filed

Date	Filings—Proceedings
1969	
May 22	Finding of Fact and Conclusions of Law, filed
	Order setting aside election of President and ordering new election, filed
July 18	Plaintiff's Notice of Appeal, filed
July 23	Defendant's Notice of Appeal, filed
Nos. 24,759 and 24,800 in the United States Court of Appeals for the Ninth Circuit	
1970	
May 8	Opinion of the Court of Appeals
	Judgment of the Court of Appeals
No. 655 in the United States Supreme Court	
September 4	Petition filed
November 6	Brief in opposition filed
December 7	Order of Supreme Court granting certiorari

IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Civil Action No. 68-326-EC

COMPLAINT under (Labor-Management Reporting and Disclosure Act of 1959)

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, DEFENDANT

COMPLAINT

I

Plaintiff brings this action under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (Act of September 14, 1959, 73 Stat. 519 *et seq.*, 29 U.S.C. 401 *et seq.*), hereinafter referred to as the Act.

II

Jurisdiction of this action is conferred upon the Court by section 402(b) of the Act (29 U.S.C. 482(b)).

III

Defendant, Local Union 6799, United Steelworkers of America, AFL-CIO-CLC, is, and at all times relevant to this action has been, an unincorporated association, maintaining its principal offices at 103½ East Holt Boulevard, City of Ontario, San Bernardino County, State of California, within the jurisdiction of this Court.

IV

Defendant is, and at all times relevant to this action has been, a local labor organization engaged in an industry affecting commerce within the meaning of sections

3(i), 3(j) and 401(b) of the Act (29 U.S.C. 402(i), 402(j)).

V

Defendant is, and at all times relevant to this action has been, chartered by and subordinate to the United Steelworkers of America AFL-CIO-CLC, hereinafter referred to as the International, an international labor organization engaged in an industry affecting commerce within the meaning of sections 3(i) and 3(j) of the Act (29 U.S.C. 402(i) and 402(j)).

VI

Defendant, acting pursuant to the International Constitution, the By-Laws for Local Unions and the Local Union Elections Manual, issued by the International conducted an election of officers on June 12, 1967. This election was subject to the provisions of Title IV of the Act (29 U.S.C. 481 *et seq.*).

VII

At defendant's regular meeting on July 11, 1967, Nicholas D. Hantzis, a member in good standing of the defendant, acting pursuant to and in accordance with the Local Union Elections Manual, attempted orally to protest the defendant's election. His protest was ruled out of order. On July 18, 1967, Hantzis filed a written protest with the International Executive Board which appointed an International Commission to hear the protest. On August 28, 1967, the Commission issued its recommendation that Hantzis' protest be denied. By letter dated September 14, 1967, Hantzis was advised that the International Executive Board had adopted the Commission's recommendation. On October 12, 1967, Hantzis, acting pursuant to and in accordance with the provisions of section 402(a) of the Act (29 U.S.C. 482(a)), filed a complaint with the plaintiff alleging violations of section 401 of the Act (29 U.S.C. 481) in the conduct of defendant's 1967 election of officers.

VIII

Plaintiff investigated the said complaint and, as a result of the facts shown by his investigation, found probable cause to believe that violations of Title IV of the Act had occurred during the conduct of the aforesaid election which had not been remedied at the time of the institution of this action.

IX

By letter dated November 21, 1967, addressed to I. W. Abel, International President, the defendant and the International were advised of the results of plaintiff's investigation. By letter dated November 22, 1967, Winn Newman, Associate General Counsel of the International, agreed that the time in which the plaintiff might bring suit with regard to defendant's aforesaid election be extended until January 11, 1968. By letter dated December 26, 1967, Winn Newman, Associate General Counsel of the International, agreed that the time in which the plaintiff might bring suit with regard to defendant's aforesaid election be extended until February 1, 1968. By letter dated January 30, 1968, Michael Gottesman, Associate General Counsel of the International, further agreed that the time in which the plaintiff might bring suit with regard to defendant's aforesaid election be extended until March 1, 1968.

X

(a) Defendant, in the conduct of the aforesaid election, violated section 401(e) of the Act (29 U.S.C. 481 (e)) by:

(i) denying its members in good standing a reasonable opportunity for the nomination of candidates by the imposition of an unreasonable qualification;

(ii) denying its members in good standing the right to be candidates and to hold office by the imposition of the said unreasonable qualification, and by the non-uniform imposition of such qualification;

(iii) denying its members the right to vote for or otherwise support the candidate or candidates of their choice by the imposition of the said unreasonable qualification;

(b) In the conduct of the aforesaid election, moneys received by a labor organization by way of dues, assessments, or similar levy, were applied to promote the candidacy of Kenneth L. Rose for the office of president, in violation of section 401(g) of the Act (29 U.S.C. 481 (g)).

XI

The violations of section 401 of the Act (29 U.S.C. 481) found and alleged above may have affected the outcome of the said election.

WHEREFORE, plaintiff prays for judgment:

(a) declaring the election conducted by defendant on June 12, 1967, to be null and void;

(b) directing the defendant to conduct a new election of officers, including new nominations, under the supervision of the plaintiff;

(c) for the costs of this action; and

(d) for such other relief as may be appropriate.

/s/ Edwin L. Weisl, Jr.
EDWIN L. WEISL, JR.
Assistant Attorney General

/s/ Dzintra I. Janavs
United States Attorney

/s/ Harland F. Leathers
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U. S. Department of Labor
Of Counsel

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Title omitted in printing]

ANSWER OF LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO

Defendant, LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, answers the complaint as follows:

FIRST DEFENSE

1. Defendant admits the allegations of Paragraphs III, IV, V, VI, IX and the third, fourth and fifth sentences of Paragraph VII.

2. Defendant lacks knowledge or information sufficient to form a belief as to the correctness of the allegations of Paragraph VIII and the sixth sentence of Paragraph VII.

3. Defendant denies each and every allegation of Paragraphs I, II, X and XI, and the first two sentences of Paragraph VII.

SECOND DEFENSE

Defendant and International were not afforded notice of, or a reasonable opportunity to correct, the matters alleged in Paragraph X of the complaint, in that said matters were not made the subject of protest within the Union; accordingly, as to such matters, the requirements of Section 402(a) of the Act, 29 U.S.C. § 482(a) have not been met, the Secretary lacks authority to bring this action, and this Court lacks jurisdiction.

WHEREFORE, defendant prays that the complaint be dismissed with costs to defendant.

DATED: March 26, 1968.

BERNARD KLEIMAN, ESQ.

ELLIOTT BREDHOFF, ESQ.
MICHAEL H. GOTTESMAN, ESQ.
GEORGE H. COHEN, ESQ.

WINN NEWMAN, ESQ.

ARNOLD, SMITH & SCHWARTZ

By /s/ Jerome Smith
JEROME SMITH
Attorneys for Defendant,
Local Union 6799, United
Steelworkers of America,
AFL-CIO

[Affidavit of Service omitted in printing]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Title omitted in printing]

ANSWER OF UNITED STEELWORKERS OF AMERICA, AFL-CIO

Intervening defendant, UNITED STEELWORKERS OF AMERICA, AFL-CIO, answers the complaint as follows:

FIRST DEFENSE

Intervening defendant adopts, as its first defense, the answer filed by defendant Local Union 6799, United Steelworkers of America, AFL-CIO.

SECOND DEFENSE

The "meeting attendance" requirement challenged in this action is contained in intervening defendant's International Constitution; is uniformly applied to each of the more than 3,000 local unions affiliated with intervening defendant; and is a "reasonable qualification uniformly imposed" within the meaning of Section 401(e) of the Act, 29 U.S.C. § 481(e). The nominations and elections at Local 6799 were conducted in accordance with all requirements of the Act.

WHEREFORE, intervening defendant prays that the complaint be dismissed.

DATED: March 26, 1968.

BERNARD KLEIMAN, ESQ.

ELLIOTT BREDHOFF, ESQ.
MICHAEL H. GOTTESMAN, ESQ.
GEORGE H. COHEN, ESQ.

WINN NEWMAN, ESQ.

ARNOLD, SMITH & SCHWARTZ

By /s/ Jerome Smith
JEROME SMITH
Attorneys for Defendant,
United Steelworkers of
America, AFL-CIO

[Affidavit of Service omitted in printing]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Title omitted in printing]

MOTION TO INTERVENE

UNITED STEELWORKERS OF AMERICA, AFL-CIO, moves pursuant to Rule 24(a), Federal Rules of Civil Procedure, to intervene in this action as a party defendant, and in support thereof shows as follows:

1. Movant is an international union, with which more than 3,000 local unions are affiliated.
2. Movant's International Constitution contains rules and procedures governing the nominations and election of officers in each of its affiliated local unions, which must be followed by each of said local unions.
3. Defendant is a local union affiliated with movant, and as such was required to implement the "meeting attendance" requirement contained in movant's International Constitution.
4. Movant has been informally advised by plaintiff that Paragraph X(a) of the complaint herein is directed at, and challenges the validity of, said "meeting attendance" requirement.
5. Movant therefore has a direct interest in the outcome of this action, for a decision favorable to plaintiff would cast doubt on the validity of this provision of movant's International Constitution, while a decision favorable to defendant would vindicate this provision of movant's International Constitution.
6. Movant's responsive pleading is tendered herewith.

WHEREFORE, movant prays that this motion be granted, and that UNITED STEELWORKERS OF AMERICA, AFL-CIO, be granted intervention as a party defendant.

DATED: March 26, 1968.

BERNARD KLEIMAN, ESQ.

ELLIOTT BREDHOFF, ESQ.
MICHAEL H. GOTTESMAN, ESQ.
GEORGE H. COHEN, ESQ.

WINN NEWMAN, ESQ.

ARNOLD, SMITH & SCHWARTZ

By /s/ Jerome Smith
JEROME SMITH

Attorneys for Defendant,
United Steelworkers of
America, AFL-CIO

IT IS SO ORDERED.

DATED: March 28, 1968.

/s/ E. Avery Crary
United States District Judge

[Affidavit of Service omitted in printing]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Title omitted in printing]

ANSWERS TO INTERROGATORIES

* * * *

Interrogatory 14: Does the plaintiff contend that the protest filed with the Union by Nicholas D. Hantzis on July 18, 1967, afforded defendants fair notice that:

(a) Its nomination requirement, as set forth in Article VII, Section 9(c), might be invalid?
(b) Glenn Ross had improperly been declared ineligible?
(c) Ed Poynter had improperly been declared eligible?
(d) Any impropriety had been committed with respect to Marvin Wright?

Answer to 14: No.

Interrogatory 15: Does the plaintiff contend that the Hantzis protest called upon defendants to correct any or all of the matters listed in Interrogatory 14 above? If so, which ones?

Answer to 15: No.

* * * *

WM. MATTHEW BYRNE, JR.
United States Attorney

FREDERICK M. BROSIO, JR.
Assistant U.S. Attorney
Chief, Civil Division

/s/ DZINTRA I. JANAVS
DZINTRA I. JANAVS
Assistant U.S. Attorney
Attorneys for Plaintiff

(Affidavit omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

[Title omitted in printing]

PRE-TRIAL CONFERENCE ORDER

Following pre-trial proceedings, pursuant to Rule 16, of the Federal Rules of Civil Procedure and Local Rule 9 of this Court,

IT IS ORDERED:

I

This action was instituted by W. Willard Wirtz, Secretary of Labor, United States Department of Labor, plaintiff, under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 481 *et seq.*) seeking judgment declaring the election conducted by defendant Local Union 6799, United Steelworkers of America, AFL-CIO, null and void, and directing the defendant to conduct a new election of its officers, including new nominations, under the supervision of the plaintiff. The issues are raised by the Complaint and the Answers of defendant Local Union 6799 and defendant by intervention, the United Steelworkers of America, AFL-CIO.

II

Jurisdiction of this action is asserted by plaintiff under section 402(b) of the Act (29 U.S.C. 482(b)). Plaintiff has investigated the complaint filed with him on October 12, 1967 by NICHOLAS D. HANTZIS, a member in good standing of defendant Local Union 6799 and has found probable cause to believe that violations of Title IV of the Act have occurred and have not been remedied. Defendant admits that, prior to filing his complaint with the plaintiff, Mr. Hantzis properly invoked his internal union remedies and that his complaint to the plaintiff was timely and properly filed in accordance with section 402(a) of the Act (29 U.S.C. 482(a)), subject to Issue of Law No. VIII A, *infra*. Within the time allowed by successive

waivers by the Associate General Counsel of defendants of the sixty-day period provided in the aforesaid section of the Act, plaintiff has brought this civil action against defendant Local Union 6799 as an entity, in the District Court of the United States for the Central District of California, in which defendant Local Union 6799 has its principal place of business.

III

The following facts are admitted and require no proof:

(1) Defendant Local Union 6799 is, and at all times relevant to this action has been, an unincorporated association maintaining its principal offices at 103½ East Holt Boulevard, City of Ontario, San Bernardino County, State of California, within the jurisdiction of this Court.

(2) Defendant Local Union 6799 is, and at all times relevant to this action has been, a local labor organization engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j) and 401(b) of the Act (29 U.S.C. 402(i), 402(j) and 481(b)).

(3) Defendant Local Union 6799 is, and at all times relevant to this action has been, chartered by and subordinate to defendant in intervention, the United Steelworkers of America, AFL-CIO, hereinafter referred to as the defendant International, an international labor organization engaged in an industry affecting commerce within the meaning of sections 3(i) and 3(j) of the Act (29 U.S.C. 402(i) and 402(j)).

(4) Defendant Local Union 6799 was chartered by the defendant International on May 27, 1965, and had approximately 578 members as of April 1967.

(5) Pursuant to Article VII, Section 5 of the intervening defendant International's Constitution defendant Local Union 6799 is deemed to have adopted, and did adopt, the Standard By-Laws for Local Unions which were last republished in January 1967 issued by the International.

(6) Defendant Local Union 6799, at all relevant times, has been conducting its affairs under the aforesaid By-Laws (as republished January, 1967); the Constitutions of International Union, United Steelworkers of America,

AFL-CIO (adopted September 1964, and September 21, 1966) and the Local Union Elections Manual of the United Steelworkers of America (as amended to January 7, 1967). The election provisions of the aforesaid By-Laws, Constitutions and Elections Manual were, and are now, subject to the provisions of Title IV of the Act.

(7) On May 18, 1967, Frank S. McKee, a Staff Representative of the defendant International, sent the following telegram to I. W. Abel, President, United Steelworkers of America:

> Local Union 6799 District 38, was chartered May 27, 1965. Contract with H. W. Loud Co., of Pomona Calif., signed July 15, 1965. First regular local union meeting scheduled and held in August 1965, Several meetings were held between May 27, 1965 the date the local union received its charter and August of 1965. In order that this local union will be in compliance with Article VII, Section Nine of the International Constitution would you please advise if the eligibility to hold a local union office began with the first regular local meeting held in August 1965 or would it be necessary to count the meetings held starting immediately after May 27, 1965.

(8) On May 9, 1967, I. W. Abel, President of the defendant International, sent the following telegram to Frank S. McKee:

> REURTEL members of Local Union 6799 would have to have credit for one half the regular meetings held beginning August 1965 to meet the meeting attendance requirement.

(9) On May 8, 1967, defendant Local Union 6799 conducted two meetings for the purpose of nominating candidates for the offices of President, Vice President, Recording Secretary, Financial Secretary, Treasurer, Guide, Inside Guard, Outside Guard and three Trustees. The election of these offices was conducted on June 12, 1967. The nomination meetings and election were subject to the provisions of Title IV of the Act (29 U.S.C. 481 *et seq.*).

(10) To be eligible as a candidate, a member (a) must have been in continuous good standing from the time he joined Local Union 6799, (b) must have been employed by H. W. Loud, Inc., and (c) must have attended eleven of the regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967, provided that a member who failed to attend a meeting because his union activities or working hours prevented his attendance would receive credit as if he had in fact attended that meeting.

(11) Prior to January 1967, defendant Local Union 6799 held two meetings each month: one for the day shift on the second Monday of each month scheduled to begin at 7:00 P.M. and another for the swing-shift on the second Tuesday of each month scheduled to begin in various months at varying times between 12:30 A.M. and 1:00 A.M.

(12) In January 1967, defendant Local Union 6799 changed its swing-shift meetings to the second Tuesday of each month scheduled to begin at 1:00 P.M.

(13) The swing-shift work hours are from 3:30 P.M. to 12:00 midnight; however, a substantial number of swing-shift employees frequently worked a 9-hour schedule until 1:00 A.M.

(14) Twenty-one (21) regular monthly meetings were scheduled to be conducted by defendant Local Union 6799 between August 1965 and April 1967. With respect to each, separate meetings were scheduled to be held for "day shift" and "swing shift" employees. The dates of these meetings, with the number of members attending each such meeting set forth in parentheses, were as follows:

August 30, 1965	(day shift),	(51)
September 13, 1965	" " ,	(75)
October 11, 1965	" " ,	(58)
November 8, 1965	" " ,	(67)
December 13, 1965	" " ,	(49)
January 10, 1966	" " ,	(70)
February 14, 1966	" " ,	(38)
March 14, 1966	" " ,	(60)
April 11, 1966	" " ,	(44)
May 9, 1966	" " ,	(42)

June 13, 1966	(day shift),	(53)
July 11, 1966	" " ,	(48)
August 8, 1966	" " ,	(43)
September 12, 1966	" " ,	(28)
October 10, 1966	" " ,	(36)
November 14, 1966	" " ,	(41)
December 12, 1966	" " ,	(25)
January 9, 1967	" " ,	(35)
February 13, 1967	" " ,	(19)
March 13, 1967	" " ,	(41)
April 10, 1967	" " ,	(55)
August 31, 1965	(swing shift),	(44)
September 14, 1965	" " ,	(36)
October 12, 1965	" " ,	(17)
November 9, 1965	" " ,	(53)
December 14, 1965	" " ,	(19)
January 11, 1966	" " ,	(30)
February 15, 1966	" " ,	(24)
March 15, 1966	" " ,	(23)
April 12, 1966	" " ,	(22)
May 10, 1966	" " ,	(25)
June 14, 1966	" " ,	(28)
July 12, 1966	" " ,	(31)
August 9, 1966	" " ,	(20)
September 13, 1966	" " ,	(18)
October 11, 1966	" " ,	(25)
November 15, 1966	" " ,	(5)
December 13, 1966	" " ,	(10)
January 9, 1967	" " ,	(13)
February 13, 1967	" " ,	(17)
March 13, 1967	" " ,	(11)
April 10, 1967	" " ,	(14)

All meetings were held at Eagles Lodge, 103½ East Holt, Ontario, except that the August 1965 meetings were held at Carpenters Hall, East Second Street, Pomona, California.

(15) The swing shift meeting for November, 1966 was scheduled to begin at 1:00 A.M. on November 15, 1966. By 2:30 A.M., only five members had arrived and signed the attendance register. Since the number of members in attendance did not constitute a quorum, no business was conducted.

The swing shift meeting for December 1966 was scheduled to begin at 1:00 A.M. on December 13, 1966. By 2:45 A.M., only five members had arrived and signed the attendance register. Since the number of members in at-

tendance did not constitute a quorum, no business was conducted. Between 2:45 A.M. and 3:00 A.M., as the meeting hall was being closed, five additional members arrived, and signed the register.

(16) Only thirty-six (36) members of defendant Local Union 6799 attended at least eleven of the regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967. Of this number nine (9) were incumbent officers of defendant Local Union 6799.

(17) The only excuses for non-attendance at the regular monthly membership meetings conducted by defendant Local Union 6799 for which credit would be given were union activities and working hours.

(18) It is approximately a 15-minute drive from the employer's plant to the union hall of defendant Local Union 6799, where the regular meetings are generally held.

(19) The Election Committee as elected on May 8, 1967 to conduct the June 12, 1967 election was composed of OTTO K. FEENSTRA (Chairman), KENNETH EASTIN, TRIBUNE C. LIO, GLENN GREENLY, and MARVIN WRIGHT.

(20) At the regular monthly membership meetings conducted by defendant Local Union 6799 on May 8, 1967, a total of forty-nine (49) members were nominated as candidates, including twenty (20) members who declined nomination at the meeting, and two (2) who declined thereafter.

(21) After nominations were closed the Election Committee determined that four nominees were ineligible to be candidates because they had neither attended eleven meetings conducted by defendant Local Union 6799 between August 1965 and April 1967 nor had sufficient excused absences to receive credit for having attended a total of eleven meetings.

(a) George Pruneri, who had been nominated as a candidate for the office of Trustee, was declared ineligible because he had neither attended eleven regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967, nor had sufficient excused absences to receive credit for having at-

tended a total of eleven meetings. Mr. Pruneri attended five meetings conducted by defendant Local Union 6799, between August 1965 and April 1967.

(b) Ray Mahan, who had been nominated as a candidate for the office of Treasurer, was declared ineligible because he had neither attended eleven regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967, nor had sufficient excused absences to receive credit for having attended a total of eleven meetings. Mr. Mahan attended six meetings conducted by defendant Local Union 6799 between August 1965 and April 1967.

(c) Elmer G. Husmann, who had been nominated as a candidate for the office of Trustee, was declared ineligible because he had neither attended eleven regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967, nor had sufficient excused absences to receive credit for having attended a total of eleven meetings. Mr. Husmann attended nine regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967.

(d) Glenn Ross, who had been nominated as a candidate for the office of Financial Secretary, was declared ineligible because he had neither attended eleven regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967, nor had sufficient excused absences to receive credit for having attended a total of eleven meetings. Mr. Ross attended seven regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967: May 10, June 14, July 12, August 9, October 11, and December 13, 1966, and February 13, 1967. On these dates Mr. Ross worked the following hours: 3:21 P.M. May 9 to 1:01 A.M. May 10; 3:25 P.M. June 13 to 1:04 A.M. June 14; 3:23 P.M. July 11 to 1:05 A.M. July 12; 3:24 P.M. August 8 to 1:03 A.M. August 9; 3:19 P.M. October 10 to 1:01 A.M. October 11; 3:09 P.M. December 12 to 1:00 A.M. December 13; and 3:31 February 13 to 1:02 A.M. February 14.

Glenn Ross worked nine (9) hour shifts on the meeting nights in November and December 1965 until approximately 1:00 A.M. Mr. Ross worked from 3:21 P.M. January 10, 1966, to 1:03 A.M. on January 11, 1966; from 3:12 P.M. on March 14, to 1:00 A.M. on March 15, 1966; from 3:21 P.M. on April 11, to 1:05 A.M. on April 12, 1966; and from 3:21 P.M. on November 14, to 1:02 A.M. on November 15, 1966.

(22) The following members were permitted to be candidates in the June 12, 1967 election conducted by defendant Local Union 6799, by virtue of the excused absences granted them by the Election Committee.

(a) Ralph Bowman, who had attended five regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967, and who received credit for having attended an addi- six meetings, was permitted to be a candidate for the office of Recording Secretary.

(b) Jerry Wooten, who had attended nine regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967, and w ho received credit for having attended an additional three meetings, was permitted to be a candidate for the office of Treasurer.

(c) Floyd Gibson, who had attended eight regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967, received credit for having attended an additional five meetings, and was permitted to be a candidate for the office of Guide.

(d) Ed Poynter, who had attended eight regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967, and received credit for having attended one additional meeting, was permitted to be a candidate for the office of Outside Guard.

(23) The names of those declared eligible by the Election Committee appeared on the printed ballot, and the election was conducted as scheduled on June 12, 1967. The details, office-by-office are as follows:

(a) *President*

The following persons were nominated as candidates for President of defendant Local Union 6799: Don Redell, Ken Rose and Nick Hantzis. Each was declared eligible by the Election Committee, and each appeared on the ballot. The election results were:

Rose	191 (elected)
Hantzis	147
Redell	59

(b) *Vice President*

The following persons were nominated as candidates for Vice President of defendant Local Union 6799: Mel Scruggs, George Hill, Loyd Cole, Hilton Willcox, Art Todd, Virgil Steele, and Ralph Bowman. Hill, Todd and Bowman declined the nomination. Each of the remaining nominees—Scruggs, Cole, Willcox and Steele—was declared eligible by the Election Committee, and each appeared on the ballot. The election results were:

Scruggs	268 (elected)
Cole	47
Willcox	45
Steele	32

(c) *Recording Secretary*

The following persons were nominated as candidates for Recording Secretary of defendant Local Union 6799: Ralph Bowman, Leonard Scandura and Tom Pipkin. Pipkin declined the nomination. Each of the remaining nominees—Bowman and Scandura—was declared eligible by the Election Committee, and each appeared on the ballot. The election results were:

Bowman	232 (elected)
Scandura	150

(d) *Financial Secretary*

The following persons were nominated as candidates for Financial Secretary of defendant Local Union 6799:

Glenn Ross, Ernie Crumpton and Otis Joiner. Ross was declared ineligible by the Election Committee; Crumpton and Joiner were declared eligible and appeared on the ballot. The election results were:

Joiner	203 (elected)
Crumpton	187

(e) *Treasurer*

The following persons were nominated as candidates for Treasurer of defendant Local Union 6799: Bill Hurd, Tom Pipkin, Ray Mahan, Jerry Wooten and Walt Farmer. Farmer declined the nomination. Mahan was declared ineligible by the Election Committee; Hurd, Pipkin and Wooten were declared eligible and appeared on the ballot. The election results were:

Pipkin	161 (elected)
Hurd	135
Wooten	91

(f) *Guide*

The following persons were nominated as candidates for Guide of defendant Local Union 6799: J. C. Scroggins, Walt Farmer, Floyd Gibson, Dan Rodriguez, Jack Cooper, Glenn Fulton, Pete Schiavoni. Scroggins, Farmer, Rodriguez, Cooper and Schiavoni declined the nomination. Gibson and Fulton were declared eligible and appeared on the ballot. The election results were:

Gibson	210 (elected)
Fulton	177

(g) *Inside Guard*

The following persons were nominated as candidates for Inside Guard of defendant Local Union 6799: Arnett James, Howard Reeves, George Ainsworth, J. C. Scroggins, Wally Blades, Clint Brown and Orville Oertwig. James, Ainsworth, Scroggins, Blades and Brown declined the nomination. Reeves and Oertwig were declared eligible and appeared on the ballot. The election results were:

Reeves	253 (elected)
Oertwig	125

(h) *Outside Guard*

The following persons were nominated as candidates for Outside Guard of defendant Local Union 6799: Ed Poynter, Jack Cooper, Wendell Williams, Clarence Thomas and Gary Miller. Cooper, Williams and Miller declined the nomination. Poynter and Thomas were declared eligible and appeared on the ballot. The election results were:

Thomas	211 (elected)
Poynter	175

(i) *Trustees*

The Constitution calls for the election of three trustees in each local. The following persons were nominated as candidates for Trustee of defendant Local Union 6799: Eugene Houghton, Frederick Burpee, Elmer Husmann, Marvin Wright, Walter Farmer, Jack Ingram, Merle Moore, Richard Mayer and George Pruneri. Wright, Farmer, Ingram and Moore declined the nomination. Husmann and Pruneri were declared ineligible by the Election Committee. This left but three active candidates—Houghton, Burpee and Mayer—each of whom was declared eligible, and they were declared elected by the Election Committee without the need for a vote.

(24) MARVIN E. WRIGHT was nominated as a candidate for the office of Trustee and declined. His payroll records reflect that Wright worked overtime on regular meeting nights in January, February, March, April, May, June, July, September, October, November and December 1966.

(25) Between August 1965 and April 1967, the employees of Howmet Corporation, Aerosystems Division, Loud Products, Pomona, California, worked three shifts. The regular hours of the day shift (exclusive of overtime) were 7:00 A.M. to 3:30 P.M. Approximately 400 people worked on the day shift. The regular hours of the swing-shift (exclusive of overtime) were 3:30 P.M. to

12:00 midnight. A substantial number (perhaps most) of the employees on the swing-shift frequently worked until 1:00 A.M. or 2:00 A.M. Approximately 200 persons worked the swing-shift. The third shift consisted of about seven or eight persons, who were in the plant during the early morning hours when the other two shifts were not present.

(26) The swing-shift monthly membership meeting always ran until at least 3:00 A.M., and frequently later.

(27) It was the responsibility of the Election Committee to determine whether the members nominated at the May 8, 1967 nomination meeting met the eligibility requirements set forth *supra* in Paragraph III (10). In order to determine whether nominees had attended or were entitled to be given credit for having attended a total of at least eleven of the regular monthly membership meetings conducted by defendant Local Union 6799 between August 1965 and April 1967, the Election Committee took the following steps:

(a) First, it reviewed the attendance register maintained by defendant Local Union 6799, and tabulated the number of regular monthly membership meetings attended by each nominee. If the attendance register indicated that the nominee had attended eleven or more meetings, the Election Committee concluded that he was eligible and conducted no further investigation.

(b) Second, if the attendance did not show that the nominee had attended 11 meetings, the Election Committee reviewed the Company's departmental overtime records to determine whether the nominee had been working during meeting huors. If the total of meetings attended, according to the attendance register, and meetings excused because of working totaled eleven or more, the Election Committee concluded that he was eligible, and conducted no further investigation.

(c) The Election Committee sent a letter to each of the four nominees for Local Union office whom it found ineligible advising them of its determination and giving them ten days to come forward and question the Election Committee's ruling. None of the four nominees for Local

Union office declared ineligible contacted the Election Committee during the ten day period.

(28) Defendant Local Union 6799 does not maintain any records showing which members worked during regular monthly membership meetings. Such information is available in the Company's departmental files.

(29) Defendant Local Union 6799 did not prepare a list of members who would be eligible to be candidates in the June 12, 1967 election prior to the May 8, 1967 nomination meetings.

(30) An attendance register was maintained by defendant Local Union 6799 outside the room where it conducted its regular monthly membership meetings. Each member was supposed to sign his name in this register as he entered the meeting room. It was the responsibility of defendant Local Union 6799's Recording Secretary to place the attendance register at the entrance to the meeting room prior to the commencement of the meeting, to collect the register at the conclusion of the meeting, and to maintain it between meetings.

(31) The attendance register was the only official record of attendance for purposes of determining eligibility.

(32) Each member of defendant Local Union 6799 has a dues checkoff card. Members were required to show their dues checkoff card to the Outside Guard as evidence of membership in order to be admitted to the regular monthly membership meetings. As a matter of practice the Outside Guard punches each member's card before the member enters the meeting hall. The dues payment card was not accepted by defendant Local Union 6799 or its Election Committee to establish a candidate's eligibility in its June 12, 1967 election of officers.

(33) Prior to June 12, 1967, there were no policies, provisions, rules, regulations, by-laws, written or oral of defendant Local Union 6799 and/or defendant International, governing the giving of credit to members for attending a regular monthly membership meeting (swing-shift or day), if the defendant Local Union 6799 failed to hold such a meeting. In ruling on the eligibility of nominees, the Election Committee determined with re-

spect to the swing shift meetings for November 1966 and December 1966 that, since these meetings were scheduled and were never cancelled, and since the officers arrived for the purpose of conducting the meetings, and since those members who arrived to attend the meetings signed the attendance register, these meetings should be treated the same as all other meetings.

(34) Defendant International Union did not advise any candidates in defendant Local Union 6799's June 12, 1967 election that the International Union's office facilities could be used to reproduce their campaign literature. One candidate, Kenneth Rose, requested permission to use such facilities to reproduce campaign literature, and his request was granted. No candidate, other than Rose, requested permission to use the International Union's office facilities to reproduce campaign literature. On December 27, 1967, defendant International Union billed Rose $13.04 for its costs, broken down as follows:

2½ reams, legal size, colored 20 wgt. paper at $3.90 per ream	— $ 9.75
2 stencils at 20 cents per stencil	— .40
secretarial services for 1 hour at $2.89 per hour	— 2.89
	$13.04

Rose paid the bill by personal check on December 28, 1967.

(35) Defendant Local Union 6799 did not re-open nominations after its Election Committee had made its determinations disqualifying certain members as candidates in the June 12, 1967 election.

(36) The eleven officers of defendant Local Union 6799 listed supra in Paragraph III(9), constitute the local's Executive Committee.

(37) Subsequent to the June 12, 1967 election of officers, defendant Local Union 6799 ceased conducting two separate monthly membership meetings—one for day shift employees and one for swing shift employees. Defendant Local Union 6799 now holds only one monthly membership meeting—on Sunday at a time when the plant is not operating. This change was made because

the members thought it would be more convenient to hold only one meeting at a time at which every member could attend.

(38) No member of defendant Local Union 6799 other than Nicholas Hantzis challenged the election of defendant Local Union 6799 before the International Executive Board.

(39) On December 18, 1967, representatives of the defendant International met with representatives of the plaintiff. Included in the matters discussed at this meeting were the following: the lawfulness of the meeting attendance requirement as a qualification on the right of defendant Local Union 6799's members to be candidates; the number of meetings for which Glenn Ross was entitled to receive credit because of his working hours; and the preparation of Ken Rose's campaign letter.

(40) By letters dated November 22, 1967, December 26, 1967, and January 30, 1968, the defendants extended the time within which plaintiff could institute this action.

(41) On January 30, 1968, representatives of the plaintiff and representatives of the defendant International held further discussions concerning the lawfulness of defendants' meeting attendance requirement as a qualification on the right of defendant Local Union 6799's members to be candidates for office in the June 12, 1967 election.

IV

The reservations as to the facts recited in Paragraph III above are as follows:

Plaintiff objects to the admissability of the above stipulated facts relating to the applicability of the election provisions of the International Constitution, the By-Laws for Local Unions, and the Local Unions Elections Manual, to each of the approximately 3,500 local unions of defendant International on the grounds that such facts are not relevant or material to the issues involved herein.

Defendants object to the admissability of all the above stipulated facts which relate solely to the matters alleged in Paragraph X(a) of the complaint, on the ground that the Secretary is not entitled to litigate such matters in this lawsuit.

V

The following facts though not admitted are not to be contested at the trial by evidence to the contrary:

None.

VI

The following issues of fact remain to be litigated upon the trial.

1. Whether the requirement that a member, to be eligible as a candidate in defendant Local Union 6799's June 12, 1967 election of officers, must have attended at least one-half of the regular monthly membership meetings conducted by the Union between August 1965 and April 1967, unless excused from attendance because working or on union business, excluded the vast majority of defendant Local Union 6799's members from eligibility for office.

2. Whether the requirement that a member, to be eligible as a candidate in defendant Local Union 6799's June 12, 1967 election of officers, must have attended at least one-half of the regular monthly membership meetings conducted by the Union between August, 1965 and April, 1967 unless excused from attendance because working or on union business, is justified by the reasons which prompted the defendant International Union to impose it.

3. Whether the requirement that a member, to be eligible as a candidate in defendant Local Union 6799's June 12, 1967 election of officers, must have attended at least one-half of the regular monthly membership meetings conducted by the Union between August 1965 and April 1967, unless excused from attendance because working or on union business, is justified by the responsibilities of the Union office sought.

4. Whether the requirement that a member, to be eligible as a candidate in defendant Local Union 6799's June 12, 1967 election of officers, must have attended at least one-half of the regular monthly membership meetings conducted by the Union between August 1965 and April 1967, unless excused from attendance because working or on union business, is comparable with the eligibility qualifications imposed by other unions.

5. Whether Glenn Ross was entitled to receive credit for attending any or all of the regular monthly membership meetings conducted by defendant Local Union 6799 on November 9, 1965, December 14, 1965, January 11, 1966, March 15, 1966, April 12, 1966, and November 15, 1966, by reason of his working overtime on such nights.

6. Whether Ed Poynter was entitled to be given credit for attending any of the regular monthly membership meetings held by defendant Local Union 6799 between August 1965 and April 1967 which he did not actually attend and, if so, how many.

7. Whether a member is entitled to receive credit for attending a meeting when he works beyond the scheduled starting time of such meeting even though the meeting did not begin until after his working hours were over.

8. Whether the members of defendant Local Union 6799 were provided adequate notice of the eligibility qualifications at a time when they could have complied with or met such requirements.

9. Whether, in practice, the meeting attendance requirement contained in the Constitution, By-Laws for Local Unions, and Local Union Elections Manual, have precluded contests for local union office in the local unions governed thereby.

10. Whether defendants were afforded notice of and had a reasonable opportunity to correct the violations alleged in plaintiff's complaint.

VII

The exhibits to be offered at trial, together with a statement of all admissions by the parties with respect thereto, are as follows:

Plaintiff's Exhibits

1. Letter dated October 12, 1967, from Mr. Nicholas D. Hantzis, as filed with the plaintiff.

2. Letter dated August 31, 1967, from Walter J. Burke, Secretary-Treasurer of the United Steelworkers of America, to Mr. Nicholas D. Hantzis.

3. Report of Commission Re: Case #E-1079 Election Appeal of Nicholas Hantzis, dated August 27, 1967.

4. Letter dated September 14, 1967, from Walter J. Burke, Secretary-Treasurer of the United Steelworkers of America, to Mr. Nicholas Hantzis.

5. A true copy of a letter dated November 21, 1967, from Henry A. Queen, Chief, Branch of Elections and Trusteeships, Office of Labor-Management and Welfare-Pension Reports, United States Department of Labor, to Mr. I. W. Abel, President of the United Steelworkers of America.

6. Weekly Time Cards for GLENN ROSS for period involved.

7. Department Overtime Attendance Records for GLENN ROSS.

8. Corporation Weekly Attendance Cards for ED POYNTER.

9. Department Overtime Attendance Records for ED POYNTER.

10. Letter with attachment, dated December 26, 1967, from Keith R. Geisert, Sub-District Director, District 38, United Steelworkers of America, to Mr. Kenneth Rose.

11. Chart depicting analysis of attendance at union meetings as a requirement for nomination and election to local union office, as provided by the national union constitutions and bylaws of the principal unions covered by the Labor-Management Reporting and Disclosure Act of 1959.

12. Plaintiff's Interrogatories Nos. 5 and 6 and defendant's Answers thereto.

Defendants object to the admissability of any exhibit listed above which relates solely to the matters alleged in Paragraph X(a) of the complaint on the ground that the Secretary is not entitled to litigate such matters in this lawsuit.

Defendants' Exhibits

A. The Constitutions of International Union, United Steelworkers of America, AFL-CIO, as adopted in September 1964 and September 21, 1966.

B. By-Laws for Local Unions, United Steelworkers of America, AFL-CIO, as republished in January 1967.

C. Local Union Elections Manual, United Steelworkers of America, AFL-CIO, as amended to January 7, 1967.

D. Letter dated May 10, 1967, from Nicholas D. Hantzis to I. W. Abel, President of the United Steelworkers of America.

E. Letter dated June 18, 1967, from Mr. Hantzis to the International Executive Board of the United Steelworkers of America.

F. List of members nominated as candidates at defendant Local Union 6799's May 8, 1967 nomination meetings.

G. A true copy of the ballot used by defendant Local Union 6799 in its June 12, 1967 election of officers.

H. The official election results of defendant Local Union 6799's June 12, 1967 election of officers.

I. Chart showing meetings attended by each member of defendant Local Union 6799.

J. The attendance register maintained by defendant Local Union 6799 for the period August 1965 to April 1967.

K. The Minutes of the regular monthly membership meetings and Executive Board meetings conducted by defendant Local Union 6799 from August 1965 through April 1967.

In addition to the above listed exhibits, defendants will offer the following exhibits, copies of which will be produced by the plaintiff.

L. Letter dated February 22, 1960, from John L. Holcombe to the Honorable Robert W. Kastenmeir.

M. Letter dated February 4, 1966, from Frank M. Kleiler to Mr. George Ford.

N. Letter dated November 25, 1966, from Samuel V. Merrick to the Honorable Jonathan Bingham.

O. Letter dated October 12, 1967, from Frank M. Kleiler to Mr. Woodrow W. Donald.

P. Letter dated October 27, 1967 from Samuel V. Merrick to the Honorable Jack Edwards.

Q. Letter dated December 5, 1967, from Frank M. Kleiler to the Honorable Jacob K. Javits.

Plaintiff objects to the admissability of defendants' Exhibits, L, M, N, O, P, and Q, on the grounds that such

Exhibits are not relevant or material to the issues involved herein.

Plaintiff and defendants have agreed that, if additional exhibits are to be offered, they will jointly move the Court to amend the Pre-Trial Conference Order.

VIII

The following issues of law, and no others remain to be litigated upon the trial:

A. Whether the plaintiff may challenge the validity of defendant Local Union 6799's June 12, 1967 election of officers on the basis of those matters alleged in Paragraph X(a) of the complaint, which encompass the issues of law set forth in paragraphs B, C, D, E, and F herein?

B. Whether the meeting attendance requirement imposed by defendant Local Union 6799 on members desiring to be candidates in its June 12, 1967 election, is a reasonable qualification within the meaning of section 401(e) of the Act (29 U.S.C. 481(e))?

C. Whether defendant Local Union 6799 uniformly applied its meeting attendance requirement in determining the eligibility of those members who were nominated as candidates during its May 8, 1967 nomination meeting?

D. Whether defendant Local Union 6799 by applying its meeting attendance requirement as it did during the 1967 election denied its members in good standing a reasonable opportunity for the nomination of candidates in violation of section 401(e) of the Act (29 U.S.C. 481(e))?

E. Whether defendant Local Union 6799 by applying its meeting attendance requirement as it did during the 1967 election denied its members in good standing the right to be candidates and to hold office in violation of section 401(e) of the Act (29 U.S.C. 481(e))?

F. Whether defendant Local Union 6799 by applying its meeting attendance requirement as it did during the 1967 election denied its members in good standing the right to vote for or otherwise support the candidate or

candidates of their choice in violation of section 401(e) of the Act (29 U.S.C 481(e))?

G. Whether union funds were expended to promote the candidacy of Kenneth L. Rose in violation of section 401 (g) of the Act (29 U.S.C. 481(g))?

H. Whether the violations, if any, which occurred during defendant Local Union 6799's 1967 election may have affected the outcome of that election, and if so, for what offices?

IX

The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of the trial of this case, unless modified to prevent manifest injustice.

DATED: Nov. 25, 1968.

/s/ E. Avery Crary
United States District Judge

Approved as to form and content:

WM. MATTHEW BYRNE, JR.
United States Attorney

/s/ Carolyn M. Reynolds
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By /s/ Jerome Smith
Attorneys for Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Title omitted in printing]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause having come before this court for trial on March 25, March 26, and April 21, 1969, the plaintiff appearing through its counsel, Wm. Matthew Byrne, Jr., United States Attorney, Frederick M. Brosio, Jr., Assistant U. S. Attorney, Chief, Civil Division, and Dzintra I. Janavs, Assistant U. S. Attorney, by Dzintra I. Janavs and by Cornelius Donoghue, Attorney in the Department of Labor, and the defendants appearing by their counsel, Michael H. Gottesman, Arnold, Smith & Schwartz, by Jerome Smith, and Carl Frankel, the court having considered the evidence, both oral and written, and having read the written briefs and arguments, and being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. Defendant Local Union 6799 is, and at all times relevant herein, has been, an unincorporated association maintaining its principal offices at 103½ East Holt Boulevard, City of Ontario, San Bernardino County, State of California, and has been a local labor organization engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j) and 401(b) of the LMRDA (29 U.S.C. 402(i), 402(j) and 481(b)).

2. Said defendant is, and at all times relevant herein has been, chartered by and subordinate to defendant in intervention, the United Steelworkers of America, AFL-CIO, hereinafter referred to as the defendant International, an international labor organization engaged in an industry affecting commerce within the meaning of sections 3(i) and 3(j) of the LMRDA (29 U.S.C. 402(i) and 402(j)).

3. Defendant Local Union 6799 was chartered by the defendant International on May 27, 1965, and had approximately 578 members as of April, 1967.

4. Pursuant to Article VII, Section 5 of the intervening defendant International's Constitution defendant Local Union 6799 is deemed to have adopted, and did adopt, the Standard By-Laws for Local Unions, issued by the International.

5. Defendant Local Union 6799, at all relevant times, has been conducting its affairs under the aforesaid By-Laws (as republished January, 1967); the Constitutions of International Union, United Steelworkers of America, AFL-CIO (adopted September, 1964, and September 21, 1966) and the Local Union Elections Manual of the United Steelworkers of America (as amended to January 7, 1967). The election provisions of the aforesaid By-Laws, Constitutions and Elections Manual were, and are now, subject to the provisions of Title IV of the LMRDA.

6. Article VII, Section 9, of the Constitution of International Union, as relevant, provides:

> "No member shall be eligible for election as a Local Union Officer or Grievance Committeeman unless
>
> * * * *
>
> "(c) He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June, 1967, election, unless his Union activities or working hours prevented his attendance."

This requirement is applicable to 3,700 Local Unions in United Steelworkers of America.

7. Article IV, Section 5, of By-Laws for Local Unions, as relevant, provides:

"No member shall be eligible for election as an Officer or Grievance Committeeman unless

* * * *

> "(c) He has attended at least one-half of the regular meetings of his Local Union for 36 months previous to the election, unless his Union activities or working hours prevented his attendance."

Defendant took appropriate steps to notify members of this eligibility requirement.

8. On May 8, 1967, Frank S. McKee, a Staff Representative of the defendant International, sent the following telegram to I. W. Abel, President, United Steelworkers of America:

> "Local Union 6799 District 38, was chartered May 27, 1965. Contract with H. W. Loud Co., of Pomona, Calif., signed July 15, 1965. First regular local union meeting scheduled and held in August, 1965. Several meetings were held between May 27, 1965, the date the local union received its charter and August of 1965. In order that this local union will be in compliance with Article VII, Section Nine of the International Constitution would you please advise if the eligibility to hold a local union office began with the first regular local meeting held in August 1965 or would it be necessary to count the meetings held starting immediately after May 27, 1965."

9. On May 9, 1967, I. W. Abel replied:

> "REURTEL members of Local Union 6799 would have to have credit for one half the regular meetings held beginning August 1965 to meet the meeting attendance requirement."

10. Between August, 1965, and April, 1967, the employees of Howmet Corporation, Aerosystems Division, Loud Products, Pomona, California, worked three shifts. The regular hours for the approximately 400 day shift employees were 7:00 a.m. to 3:30 p.m. The regular hours for the approximately 200 swing-shift employees were 3:30 p.m. to 12:00 midnight, but a substantial number of the swingshift employees frequently worked until 1:00 a.m. or 2:00 a.m. The third shift, consisting of about seven or eight persons, worked during the early morning hours.

11. Prior to January, 1967, defendant Local Union 6799 held one meeting each month conducted in two sessions: one for the day shift on the second Monday of each month, scheduled to begin at 7:00 p.m., and another for the swing-shift on the second Tuesday of each month, scheduled to begin in various months at varying times between 12:30 a.m. and 1:00 a.m. In January, 1967, swing-

shift sessions were changed to 1:00 p.m., the second Tuesday of each month.

12. Twenty-one (21) regular monthly meetings were scheduled to be conducted by defendant Local Union 6799 between August, 1965, and April, 1967. The dates of these meetings, with the number of members attending each set forth in parentheses, were as follows:

August 30, 1965	(day shift),	(51)
September 13, 1965	" " ,	(75)
October 11, 1965	" " ,	(58)
November 8, 1965	" " ,	(67)
December 13, 1965	" " ,	(49)
January 10, 1966	" " ,	(70)
February 14, 1966	" " ,	(38)
March 14, 1966	" " ,	(60)
April 11, 1966	" " ,	(44)
May 9, 1966	" " ,	(42)
June 13, 1966	" " ,	(53)
July 11, 1966	" " ,	(48)
August 8, 1966	" " ,	(43)
September 12, 1966	" " ,	(28)
October 10, 1966	" " ,	(36)
November 14, 1966	" " ,	(41)
December 12, 1966	" " ,	(25)
January 9, 1967	" " ,	(35)
February 13, 1967	" " ,	(19)
March 13, 1967	" " ,	(41)
April 10, 1967	" " ,	(55)
August 31, 1965	(swing shift),	(44)
September 14, 1965	" " ,	(36)
October 12, 1965	" " ,	(17)
November 9, 1965	" " ,	(53)
December 14, 1965	" " ,	(19)
January 11, 1966	" " ,	(30)
February 15, 1966	" " ,	(24)
March 15, 1966	" " ,	(23)
April 12, 1966	" " ,	(22)
May 10, 1966	" " ,	(25)
June 14, 1966	" " ,	(28)
July 12, 1966	" " ,	(31)
August 9, 1966	" " ,	(20)
September 13, 1966	" " ,	(18)
October 11, 1966	" " ,	(25)
November 15, 1966	" " ,	(5)
December 13, 1966	" " ,	(10)
January 9, 1967	" " ,	(13)
February 13, 1967	" " ,	(17)
March 13, 1967	" " ,	(11)
April 10, 1967	" " ,	(14)

13. On May 8, 1967, defendant Local Union 6799 conducted two meetings for the purpose of nominating candidates for the June 12, 1967, election.

14. To be eligible as a candidate, a member had to a) be in continuous good standing from the time he joined Local Union 6799, b) be employed by H. W. Loud, Inc., and c) have attended 11 of the regular monthly meetings of defendant Local Union 6799 between August, 1965, and April, 1967. The only excuse provision actually applied in the June 12, 1967, election of Local Union 6799 was the defendants' work excuse provision. Since a substantial number of the approximately 200 swing-shift employees worked a nine-hour shift much of the time, it is estimated that at least 12% of the swing-shift qualified either through credits for overtime or by a combination of such credits and actual attendance. Since overtime for the day shift employees would not extend until or past 7:00 p.m., they could have attended the 7:00 p.m. meetings, and therefore the work excuse provision was not applicable as to them.

15. Only thirty-six (36) members of defendant Local Union 6799 actually attended at least 11 of the regular monthly meetings conducted between August, 1965 and April, 1967. Nine (9) of these were incumbent officers.

15a. The meeting attendance requirement is designed to increase attendance at meetings and insure candidates who have demonstrated interest in union problems, are familiar with them, and better qualified to serve as officers of the union. It is a reasonable requirement, because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision.

16. The Election Committee as elected on May 8, 1967, to conduct the June 12, 1967 election, was composed of Otto K. Feenstra (Chairman), Kenneth Easin, Tribune C. Lio, Glenn Greenly, and Marvin Wright.

17. At the meetings conducted on May 8, 1967, 49 members were nominated as candidates. 22 of these declined nomination. Twenty-four met the eligibility requirements and three did not.

18. Marvin E. Wright, nominated as a candidate for the office of trustee, declined because he thought he did not satisfy the attendance requirement, because he had not attended any meetings and did not think he had sufficient overtime to qualify for sufficient credits. Mr. Wright testified that he had known that he had sufficient overtime credits, as in fact he did, he would not have declined the nomination. He testified also that prior to being on the Election Committee, he did not know where to check about possible overtime credits.

19. It was the responsibility of the Election Committee to determine whether the nominees met the eligibility requirements of the union. To determine whether nominees had attended or were entitled to be given credit for having attended at least 11 of the regular monthly meetings. The Election Committee first reviewed the attendance register of the defendant Local Union 6799, and tabulated the number of regular monthly meetings attended by each nominee. If the attendance register indicated that the nominee had attended 11 or more meetings, the Election Committee concluded that he was eligible. If the attendance register did not show that the nominee had attended at least 11 meetings, the Election Committee requested foremen to review the Company's departmental overtime records to determine whether the nominee had been working up to or past the scheduled meeting starting time. If the total of meetings attended, according to the attendance register, and meetings excused because of working overtime totaled 11 or more, the Election Committee concluded that the nominee was eligible.

20. Each member of defendant Local Union 6799 had a dues check-off card, which he was required to show to the Outside Guard to be admitted to the regular monthly meetings. This card was punched before the member entered the meeting hall. The Election Committee decided, sometime after the nomination meetings of May 8, 1967, that this card would not be acceptable as proof of a candidate's having attended meetings, for the purpose of determining whether or not the candidate satisfied the union's attendance requirement, and that the only record acceptable for this purpose would be the Local's attend-

ance register. The membership was advised of the above sometime after the nomination meeting.

21. The attendance register was a looseleaf binder and it was the responsibility of the Recording Secretary to place it at the entrance to the meeting room prior to the commencement of the meetings, to collect it at the conclusion, and to maintain it between meetings. Each member was supposed to sign it as he entered the meeting room and members were reminded on several occasions to do so. Two witnesses testified that they did not always sign this register, but sometimes had only their membership cards punched.

22. Neither defendant had any policy or instructions as to how much overtime a member had to have worked on a particular meeting night to receive credit for having attended the meeting. After the nomination meetings of May 8, 1967, the Election Committee decided that anyone who worked up to or past the scheduled meeting time on a meeting night, would be entitled to credit.

23. The defendant Local Union 6799 did not maintain any records showing which members worked up to or past the scheduled meeting starting time. Company's departmental files, maintained for the purpose of equalizing overtime, however, show the time worked in hourly increments. These records do not have to be kept for any specific period of time, but some, covering the period involved in the election, were still in existence at the time of trial herein.

24. The Election Committee declared George Pruneri and Elmer G. Husman candidates for the office of Trustee, Ray Mahan, candidate for the office of Treasurer, and Glenn Ross, candidate for the office of Financial Secretary, ineligible because they had neither attended 11 regular monthly membership meetings, nor had sufficient work excuses to receive credit for having attended a total of 11 meetings. According to the attendance register, Mr. Pruneri had attended five, Mr. Mahan had attended six, Mr. Husman had attended nine, and Mr. Ross had attended seven regular monthly meetings. Since Mr. Ross had worked 9-hour shifts on six other meeting nights, he was declared ineligible erroneously.

25. Although the Election Committee sent a letter to each of the four nominees found ineligible, advising them of said determination and giving them 10 days to question it, none contacted the Election Committee within that period. Elmer Husman did question the determination of the Election Committee after the election, presenting his punched membership card as evidence of having attended sufficient meetings to qualify. Mr. Ross testified that although he really did not want to hold office and therefore did not question the Election Committee determination, he would have run had he not been declared ineligible, because too many people let George do it.

26. Defendant Local Union 6799 did not reopen nominations after the Election Committee had disqualified the four nominees as candidates.

27. Ed Poynter, who had attended eight regular monthly meetings between August, 1965, and April, 1967, and who was not entitled to sufficient credits for overtime work, was erroneously held eligible as a candidate for the office of Outside Guard.

28. The errors made by the Election Committee in holding Ross ineligible as a candidate and Poynter eligible, were honest, unintentional mistakes and did not affect the outcome.

29. The election was conducted on June 12, 1967, and the details are as follows:

President

Don Redell, Ken Rose and Nick Hantzis were nominated as candidates for President. The election results were:

Rose	191 (elected)
Hantzis	147
Redell	59

Vice-President

Mel Scruggs, George Hill, Loyd Cole, Hilton Willcox, Art Todd, Virgil Steele, and Ralph Bowman were nominated as candidates for Vice-President. Hill, Todd and

Bowman declined the nomination. The election results were:

Scruggs	268	(elected)
Cole	47	
Willcox	45	
Steele	32	

Recording Secretary

Ralph Bowman, Leonard Scandura and Tom Pipkin were nominated as candidates for Recording Secretary. Pipkin declined the nomination. The election results were:

Bowman	232	(elected)
Scandura	150	

Financial Secretary

Glenn Ross, Ernie Crumpton and Otis Joiner were nominated as candidates for Financial Secretary. Ross was declared ineligible by the Election Committee. The election results were:

Joiner	203	(elected)
Crumpton	187	

Treasurer

Bill Hurd, Tom Pipkin, Ray Mahan, Merry Wooten and Walt Farmer were nominated as candidates for Treasurer. Farmer declined the nomination, and Mahan was declared ineligible by the Election Committee. The election results were:

Pipkin	161	(elected)
Hurd	135	
Wooten	91	

Guide

J. C. Scroggins, Walt Farmer, Floyd Gibson, Dan Rodriguez, Jack Cooper, Glenn Fulton, and Pete Schiavoni were nominated as candidates for Guide. Scroggins, Farmer, Rodriguez, Cooper and Schiavoni declined the nomination. The election results were:

Gibson	210 (elected)
Fulton	177

Inside Guard

Arnett James, Howard Reeves, George Ainsworth, J. C. Scroggins, Wally Blades, Clint Brown, and Orville Oertwig were nominated as candidates for Inside Guard. James, Ainsworth, Scroggins, Blades and Brown declined the nomination. The election results were:

Peeves	253 (elected)
Oertwig	125

Outside Guard

Ed Poynter, Jack Cooper, Wendell Williams, Clarence Thomas, and Gary Miller were nominated as candidates for Outside Guard. Cooper, Williams and Miller declined the nomination. Paynter and Thomas were declared eligible. The election results were:

Thomas	211 (elected)
Poynter	175

Trustees

The Constitution calls for the election of three trustees in each local. Eugene Houghton, Frederick Burpee, Elmer Husman, Marvin Wright, Walter Farmer, Jack Ingram, Merle Moore, Richard Mayer, and George Pruneri were nominated as candidates for Trustee. Wright, Farmer, Ingram and Moore declined the nomination. Husman and Pruneri were declared ineligible by the Election Committee. The remaining three candidates were declared elected by the Election Committee without the need for a vote.

30. Subsequent to the June 12, 1967 election, defendant Local Union 6799 changed to only one-session monthly membership meeting, held on Sunday when no members were working.

31. Defendant International Union did not advise any of the candidates that the International Union's facilities could be used to reproduce their campaign literature.

Kenneth Rose, candidate for President, requested permission to use such facilities to reproduce campaign literature, and his request was granted. No candidate, other than Rose, made a similar request. Rose reproduced three different leaflets, and these were handed out at the plant's entrance gate on several occasions. A stack of leaflets was placed near the time clock. Altogether, about 1200 leaflets were prepared for Rose. Rose was billed on December 27, 1967, as follows:

2½ reams, legal size, colored 20 wgt. paper at $3.90 per ream	— $ 9.75
2 stencils at 20 cents per stencil	— .40
secretarial services for 1 hour at $2.89 per hour	— 2.89
	$13.04

Rose paid the bill on December 28, 1967.

32. Nicholas Hantzis, a member of defendant Local Union 6799, protested the June 8, 1967 election of said Local at the July 10, 1967 regular swing-shift meeting, and again before the International Executive Board by a letter dated July 18, 1967. Hantzis did not challenge the reasonableness of the defendants' attendance requirement in either protest, but did complain, among other things, about the use of union facilities to prepare campaign literature for presidential candidate, Ken Rose. In his complaint to the plaintiff, dated October 11, 1967, Hantzis, whose protest had failed to obtain relief from the defendants, complained again about the use of union facilities for preparing Rose's campaign literature, and questioned also the reasonableness of the attendance requirement.

33. On November 21, 1967, a representative of the plaintiff wrote to I. W. Abel, president of defendant International (plaintiff's Exhibit 9), as relevant, as follows:

> "The investigation thus far conducted established probable cause to believe that the election conducted by LU 6799 violated Title IV in the following particulars:"
>
> * * * *

"2. Members were denied their right to vote for and otherwise support the candidates of their choice in that a candidate was declared ineligible who in fact did meet the candidacy requirements (401(e)).

3. A member was denied his right to be a candidate by reason of being improperly declared ineligible by the Election Committee (401(e)).

4. Members in good standing were denied the right to be candidates and to hold office (subject to Section 504 and to reasonable qualifications uniformly imposed) in the application of constitutional requirements which resulted in approximately 93.7% of the active membership being ruled ineligible (401(e))."

* * * *

"Money received by a labor organization by way of dues, assessments, or similar levy was used to promote the candidacy of the incumbent candidate for president in that material and equipment furnished by the International Union for the use of the International Staff Representative was utilized to reproduce campaign literature for the incumbent president (401(g))."

34. On December 18, 1967, representatives of the defendants met with representatives of the plaintiff. Among the matters discussed was the lawfulness of the meeting attendance requirement as a qualification of the right of defendant Local Union 6799's members to be candidates, the number of meetings for which Glenn Ross was entitled to receive credit because of his working hours, and the preparation of Ken Rose's campaign literature. On January 30, 1968, representatives of plaintiff and the defendants further discussed the lawfulness of the meeting attendance requirement as a qualification on the right of defendant Local Union 6799's members to be candidates for office in the June 12, 1967 election.

35. By letters dated November 22, 1967, December 26, 1967, and January 30, 1968, the defendants extended the time within which plaintiff could institute this action, and this action was ultimately filed on February 29, 1968.

CONCLUSIONS OF LAW

1. This court has jurisdiction of the subject matter and parties herein.

2. The Secretary of Labor may include in his complaint, filed pursuant to Section 402 of the LMRDA, violations disclosed by his investigation, even though said violations were not raised by the union member in his protests to the union, provided the Secretary gives the defendant union a reasonable opportunity to correct the violations, prior to filing suit. The defendants herein had adequate notice that the Secretary in his Complaint would question the reasonableness of their attendance requirement.

3. Although a two-year rule might be more reasonable, the three-year meeting attendance requirement of the defendants is not an unreasonable candidacy qualification under 401(e) of LMRDA.

4. Furthermore, the defendants' meeting attendance requirement as applied in the 1967 election of Local 6799 was not an unreasonable candidacy qualification under Section 401(e).

5. There was no violation of the requirement in Section 401(e) that qualifications be uniformly applied, by the wrongful qualification of Poynter and by the wrongful disqualification of Glenn Ross as candidates, because these were honest, unintentional mistakes on the part of the Election Committee, and because Mr. Ross failed to contest his disqualification prior to the election.

6. The monetary value of the union service or facilities provided for the preparation of a candidate's campaign literature is unimportant as regards violation of Section 401(g) of the LMRDA. Proof of any expenditure of union funds on behalf of a candidate establishes a violation of said section, and a prima facie case for the Secretary that the violation may have affected the outcome of the election.

7. The violation of Section 401(g) herein may have affected the outcome of the 1967 election of Local Union 6799 as to the office of the President.

8. The 1967 election of Local Union 6799 should, therefore, be set aside as regards the office of the President, and a new election for said office should be held, under the supervision of the plaintiff.

DATED: This 16th day of May 1969.

/s/ E. Avery Crary
United States District Judge

[Certificate of Service omitted in printing]

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 68-326-EC

GEORGE P. SHULTZ, Secretary of Labor, United States Department of Labor, PLAINTIFF

vs.

LOCAL UNION 6799, United Steelworkers of America, AFL-CIO, and UNITED STEELWORKERS OF AMERICA, AFL-CIO, DEFENDANTS

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law made in this action,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The June 12, 1967 election of defendant Local Union 6799, for the office of President, be, and is, hereby set aside.

2. At a time to be agreed to by the parties to this action, the defendant Local Union 6799 will hold a new election for the office of President. Plaintiff will supervise the nomination, election and run-off election, if any, for said office, in accordance with Section 402(c) of LMRDA.

3. The Court will retain jurisdiction of this matter, and after the aforesaid new election (and run-off election, if any) for the office of President, upon certification to the court by the Secretary of Labor, of the name of the person so elected, the Court will, as provided in Section 402(c) of LMRDA, enter a decree declaring such person to be the President of the defendant Local Union 6799.

DATED: This 16th day of May 1969.

/s/ E. Avery Crary
United States District Judge

Presented by:

WM. MATTHEW BYRNE, JR.
United States Attorney
FREDERICK M. BROSIO, JR.
Assistant U. S. Attorney
Chief, Civil Division

/s/ Dzintra I. Janavs
DZINTRA I. JANAVS
Assistant U. S. Attorney

Attorneys for Plaintiff.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24,759
No. 24,800

GEORGE P. SHULTZ, Secretary of Labor,
PLAINTIFF-APPELLANT, CROSS-APPELLEE

vs.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, ET AL., DEFENDANTS-APPELLEES, CROSS-APPELLANTS

[May 8, 1970]

Appeal from the United States District Court
for the Central District of California

Before: BARNES, KOELSCH and KILKENNY, Circuit Judges.

KOELSCH, Circuit Judge.

The Secretary of Labor brought this action in the district court pursuant to § 402(b) of the Labor Management Reporting and Disclosure Act against Local Union 6799, United Steelworkers of America, to secure judgment setting aside an election of officers and directing the Local to conduct a new election under supervision of the Secretary.

That section authorizes the Secretary to commence and prosecute such an action on timely complaint of a union member who has exhausted the available internal remedies afforded by the union whenever the Secretary, upon an investigation, finds probable cause to believe that the election was not in compliance with Section 401 of the Act; Section 402(c) empowers the court to order a new

election if it finds the violation "may have affected the outcome of an election." [1]

The Secretary asserted three separate claims;

(1) that a rule of the International, applicable to all locals, including Local 6799, prescribing qualifications for candidate eligibility, exceeded the permissible limits of provisions in Section 401(e) and tainted the whole election thus, requiring a complete new election for all officers;

(2) that the eligibility rule (even if valid) was not uniformly applied, as required by Section 401(e), to prospective candidates for the office of Financial Secretary, thus requiring a new election for that office;

(3) that the International had used union funds to promote the candidacy of one of the candidates for the office of President in violation of Section 401(g), thus requiring a new election for that office.[2]

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[1] Section 402 (29 U.S.C. 482) provides:

"(a) A member of a labor organization—(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 (section 401) of this title . . .

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization . . . to set aside the invalid election. . . .

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds . . . (2) that the violation of section 481 (section 401) of this title may have affected the outcome of an election, the court shall declare the election . . . to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization, . . ."

[2] Section 401 (29 U.S.C. 481) provides:

"(e) In any election . . . a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate

The district court allowed the International Union to intervene and, after a hearing, held the election invalid solely as to the office of president. Judgment was entered ordering a limited new election. The matter is here on the Secretary's appeal and the union's cross-appeal.

Appellees make a threshold objection to the consideration of the Secretary's appeal. They urge that the Secretary lacked standing to assert the two Section 401(e) claims upon which judgment went against him. Their contention, in substance, is: that Section 402 of the Act does not permit the Secretary to allege a particular violation of Section 401 in a suit to set aside an election unless a union member first unsuccessfully protests that violation to the union and that this statutory precondition was not met. The Secretary, although conceding that the union member's protest was silent as to any 401(e) violation, argues that this fact is immaterial; his position is that Section 402 imposes no such limitation but permits the Secretary to assert any violation of Section 401 disclosed by his own investigation even though not so protested by the union member.[3]

The issue poses difficult problems and any answer is not entirely free of doubt; however, we are convinced and therefore conclude that Congress intended to empower the

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and to hold office (subject . . . to reasonable qualifications uniformly imposed). . . .

(g) No moneys received by any labor organization by way of dues, assessments, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for holding an election.

[3] The sole member-protest of the election to either the local or international union was made by Nicholas Hantzis, a candidate for the office of president of the Local; his protest concerned an alleged diversion of union funds to defray expenses of Kenneth Rose, the incumbent president, in conducting his successful campaign for reelection. The Secretary acknowledged that this protest did not afford the unions "fair notice" that the union's candidacy eligibility requirement might be invalid or that it was not uniformly imposed; he further acknowledged that Hantzis made no demand on the union to act on those matters.

Secretary to assert those violations that are fairly apparent from a member's protest to the union and no others.[4]

Section 402 is ambiguous. Its exhaustion of remedies precondition logically suggests that the union must be afforded fair notice of the purported wrong and a reasonable time ["three calendar months" is the period designated in 402(a)(2)] to take corrective measures through its own internal machinery before complaint may be filed with the Secretary;[5] yet the section also provides that the complaint (to the Secretary) may allege "any" violation and the Secretary must bring a civil action to set aside the invalid election within sixty days after receiving the complaint. To allow the Secretary wide ranging power to urge "any" violation would in effect nullify the exhaustion requirement; not only might the union be completely unaware of the asserted violation prior to the suit but, even if the Secretary gives notice before filing suit, the "three calendar months" period allowed for corrective action by the union would be rendered virtually meaningless. However, if the broad language appearing in the section is more narrowly construed, these inconsistencies disappear and the several provisions become harmonious.[6]

Moreover, we believe the background and legislative history of the Act also support our construction. As said in *Wirtz* v. *Local 153, Glass Bottle Blowers Association of the United States and Canada, AFL-CIO*, 389 U.S. 463, 470 (1968):

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[4] Both parties rely on and quote extensively from Wirtz v. Laborers Union, 389 U.S. 477 (1968). But in that decision the Court declined to express an opinion on the subject, and was careful to so note.

[5] The Court's observation in Wirtz v. Local 153, Glass Bottle Blowers Association of the United States and Canada, 389 U.S. 463, 472 (1968) is relevant; "The stated commitment is to postpone governmental intervention until the union is afforded the opportunity to redress the violation."

[6] Section 601 should also be noted. Although vesting the Secretary with broad powers to conduct, on his own initiative, investigations into union affairs, it does not authorize him to commence an action even if his investigation leads him to believe a union is violating the Act. He may only report the matter to interested persons. Wirtz v. Laborers Union, 389 U.S. 477, 482, f.n.5.

> "Title IV's special function in furthering the overall goals of the LMRDA is to insure 'free and democratic' elections. The legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs. The extesive and vigorous debate over Title IV manifested a conflict over the extent to which governmental intervention in this most crucial aspect of internal union affairs was necessary or desirable. In the end there emerged a 'general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the courts.' "[7]

We turn to the union's appeal. The agreed facts fully justify the district court's finding of a union violation of Section 401(g) with respect to the election for the office of president. They disclose that the International donated materials, secretarial help and the use of its facilities to print advertising leaflets for Kenneth Rose, the Local's incumbent president, which Rose used in conducting his successful campaign for reelection.

The expense was undoubtedly "minimal," as appellees argue, but it nevertheless reflected the outlay of a sensible sum of union money. Indeed the International, shortly after the Secretary began his investigation and made known his interest in the matter, presented Rose a bill for $13.04, which he immediately paid.

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[7] Since we hold that an accommodation of the public interest and union autonomy can best be achieved by requiring a member to invoke a union's internal remedies before the Secretary can act, we deem it immaterial that in this case the Local had notice from the Secretary of the two asserted violations for more than ninety days before he commenced this action.

Neither are we persuaded by the Secretary's argument, that affirmance of the judgment ordering a new election for president under the supervision of the Secretary, requires a present judicial determination of the validity of the candidate-eligibility rule. If, as we concluded, the issue is not properly before the court, an opinion on that matter would be merely advisory.

The legislative history of the Act does not indicate that Congress intended to place a limit on the amount that a union might lawfully spend to aid a candidate for office or that it mean to encourage troublesome factual disputes over how much (or little) money constitutes a "de minimus" amount; and the language of the provision itself is clear and unambiguous. It provides in terms that "no moneys" of a union shall be spent to promote the candidacy of any person for union office.

Likewise unconvincing is appellee's argument that a union is not in violation unless it grants the request of one candidate for financial aid and rejects that of another. Granted that the object of the section is to prohibit discrimination between candidates and that this condition would not exist if a union contributed equally to all candidates for a particular office, the inference is plain that the unlikely probability of even handed union financial aid to several candidates, as well as financial aid to an individual candidate, is equally prohibited. Congress declared in the second of the two sentences comprising the provision that "Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates and other expenses necessary for the holding of an election."

We also approve, as not "clearly erroneous" the district court's companion finding that the violation "may have affected" the outcome of the presidential election. The financial aid was reflected in the form of three separate campaign dodgers or pamphlets; in all some 1200 were printed; obviously they were calculated to secure voter support for Rose. Although the record does not disclose the approximate number circulated and posted, it is clear that many were. Whether they produced the desired result is of course impossible to determine, but proof of that fact is not required. *Wirtz* v. *Hotel, Motel & Club Employees Union Local 6*, 391 U.S. 492, 505-8 (1968). However, it does appear that the number of dodgers was double that of the Local's membership and that Rose won the election by a narrow margin. Thus it is not improbable that the financial aid "may have affected" the election.

The judgment is affirmed.

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24759 24800

GEORGE P. SHULTZ, Secretary of Labor,
PLAINTIFF-APPELLANT, CROSS-APPELLEE

vs.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, ET AL., DEFENDANTS-APPELLEES, CROSS-APPELLANTS

APPEAL from the United States District Court for the Central District of California.

THIS CAUSE came on to be heard on the Transcript of the record from the United States District Court for the Central District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered May 8, 1970

SUPREME COURT OF THE UNITED STATES

No. 655, October Term, 1970

JAMES D. HODGSON, Secretary of Labor, PETITIONER

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, et al.

ORDER ALLOWING CERTIORARI—Filed December 7, 1970
The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE E. AVERY CRARY, JUDGE PRESIDING

[Title omitted in printing]

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Place: Los Angeles, California

* * * *

APPEARANCES:

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* * * *

[5] OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

MRS. JANAVS: I am going to confine myself to a very few remarks at this time, your Honor, because I think the evidence, of course, will speak for itself.

The one thing I do wish to emphasize most at the opening of this case is that the plaintiff, the Secretary of Labor, is not in court today solely and primarily on behalf of one particular Union member or a number of particular Union members, but, as has been stated by the United States Supreme Court in the Local 125 case we discussed at an earlier hearing, and Local 153, the Glass Auto Blowers Union, but we are here to protect the public interest in assuring free and democratic elections in Unions all over the country.

[6] In this particular case we are challenging one election, and that is, the 1967 election of Local 6799 of the United Steel Workers.

The defendant has challenged before and no doubt will challenge again this morning sometime possibly the scope of the plaintiff's Complaint herein.

The law, I do not believe permits, and I don't think it should permit such a challenge in a case, such as here, where adequate notice was given to the Union, certainly by the Department of Labor, as to what investigation was going on, basically what had been discovered and what the Secretary was planning to allege in general terms in his Complaint.

I think the Supreme Court case, which was cited by both parties earlier, Local 125, in its language made it clear that the Secretary should not be limited by the specifications or the specifics of the Union members' complaint.

We pointed out that the Local 445 Engineers Union case, the one cited in our footnote, a Second Circuit case, also, as an aside,—it was not a direct issue there, it was an aside—stated that the complaint to the Secretary had raised the issue and where the Union had been given adequaute notice of what to expect and had a chance to remedy the challenged violations, that the [7] Secretary could bring the action.

I think one other case, which we cited in our brief at the time but which we did not discuss, and I would like to emphasize now because I think that is really most directly in point, is Wirtz v. Local 1622, the Northern District of California case. The citation was 285 Fed. Supp. 455.

In that case the Secretary, in fact, brought a complaint based upon a violation which it discovered in its investigation, which had not been raised by anyone any place. I think the Court there also mentioned the Local 125 case, decided by the Supreme Court.

It emphasized the purpose of the Act and the purpose of the Secretary bringing the action and concluded that there are certain rights that are basic enough and important enough that even if the Union member may have not been sophisticated enough and may not have had the means available financially to discover, that if these violations are discovered that certainly the Secretary has a right to litigate them.

As to the merits, I am not going to make any lengthy statement at all. Our contention is that the requirement of the defendant that a member must have attended 11 out of 21 meetings to be eligible as a [8] candidate in the 1967 election is unreasonable, in the circumstances of this case, as it will appear from the evidence and it did violate Section 481(e) of the Act.

THE COURT: Who is to determine whether the requirement is unreasonable? Is that an issue for the Court to determine?

MRS. JANAVS: Yes, your Honor, that would be the issue for the Court to determine.

THE COURT: In other words, the Court can review all the rules that the Union has and then it is up to the Court to determine whether the rules are fair, is that it, on the bringing of a complaint by the Department of Labor?

MRS. JANAVS: Whether the rules were fair in the circumstances that this particular Union was faced with. It has to be considered in the context. In other words, what possibility these people had to attend the meetings.

Was the meeting requirements justified by the alleged purpose, for instance, in this case,—

THE COURT: Do you have any cases on this issue of the Court's determination of the fairness of the rule, that that is for the Court to determine? Do you have any authority on that?

MRS. JANAVS: I believe the law itself so states. Also I think—

[9] THE COURT: Does it? Point to the regulation or statute that so provides, that it's a matter for the Court to determine. Maybe there is no issue on it.

Is there any issue on that, Counsel?

MR. GOTTESMAN: We agree the Court has to determine reasonableness. I think we disagree with how broad the scope of the Court's discretion should be in making that decision.

THE COURT: Well, that is what I am interested in, is the broadness of the scope of the Court's discretion.

MRS. JANAVS: The Court would decide that issue. I think Section 482—29 U.S.C. 482.

THE COURT: 29 U.S.C.

MRS. JANAVS: 29 U.S.C. 482, Subsections (c)(1) and (2), which reads as follows:

> "(c) If, upon a preponderance of the evidence after a trial upon the merits, the Court finds—
>
> "(1) that an election has not been held within the time prescribed by Section 401, or
>
> "(2) that the violation of Section 401 may have affected the outcome of an [10] election, the Court shall declare the election, if any, to be void" and so on.

I believe that this—

THE COURT: That doesn't quite hit the point I'm making inquiry to.

Anyway, we will see how it develops. As I understand, so far as the election is concerned, there is a claim that the requirement was too restrictive, but also that the requirement was not uniformly applied.

MRS. JANAVS: That is correct, your Honor. Those are the two allegations we make in connection with the meeting attendance requirement.

In addition we also have alleged that there was violation of Section 481(g) of the Act, which prohibits outright and unconditionally, without stating any minimum cost involved the use of any Union funds in support of any particular candidate.

THE COURT: Yes, I understand that. That is the printing cost, the $13.00 and so forth.

MRS. JANAVS: That is right.

THE COURT: The issue there is whether it may have affected the election, as I understand it.

MRS. JANAVS: Right. As to whether or not the election may have been affected, our contention on that point, of course, is if any one or a combination [11] of these various violations assuming violations occurred, may have affected the outcome, then, of course, the Secretary is entitled to relief under the law.

As far as to what extent effective outcome has to be proved by the Secretary, this, of course, I think was explained by the United States Supreme Court in Wirtz v. Local 6, which is 391 United States Reports 492.

In that case the Court, in fact, said that if there had actually been a violation which had been shown by the Secretary, then a prima facie case had been made out, and also the results would have been affected.

Unless the Union comes in and actually puts on proof that that effect has been—that there has been no effect the Secretary has made his case, because as a practical matter it would be almost impossible in some of these situations to put on evidence of that.

* * * *

[12] OPENING STATEMENT ON BEHALF OF DEFENDANTS

MR. GOTTESMAN: May it please the Court, Mrs. Janavs has correctly anticipated that we will raise as a preliminary matter a renewal of the motion which we made for summary judgment earlier.

The Court may recall that we did raise the question by a Motion for Summary Judgment. Whether the Government or the Secretary of Labor may bring a lawsuit

about matters which were not raised within the Union by the complaining member.

THE COURT: Yes. Yes, I remember it so well.

MR. GOTTESMAN: At that time your Honor denied the motion without prejudice to it being renewed at trial.

THE COURT: Yes.

MR. GOTTESMAN: Now, I would not undertake at this point to have another full-blown argument on it. I would like to—

THE COURT: I don't want you to argue it now. I have read these things again and I am going to proceed now with the evidence.

* * * *

[13] MR. GOTTESMAN: Now, proceeding to the, as we see them, three issues which are to be tried here. These are the three claims which the Secretary of Labor makes about the conduct of this election.

The first and in our view the most important, because of its implication for us on a nationwide basis, is the claim that our meeting attendance rule is an unlawful rule or an unreasonable rule.

Now, every time the plaintiff refers to the unreasonableness of the rule, the plaintiff says, "unreasonable in the circumstances of this case".

We understand the plaintiff's position to be that, with respect to meeting attendance rule, you have to examine exactly how it worked in the particular facts in the particular case, to decide whether or not it is [14] reasonable.

That confronts the defendant International Union with a very difficult dilemma. The Union has described in its Constitution the meeting attendance rule. The provision that in order to run for Local Union office you must have attended half the meetings or had half excused absence.

The rule, as we look at it, is such a perfectly reasonable rule. I suppose that is why we have lawsuits. The Union wants to assure that those people who take office in the Union have had some knowledge about how the Union works, what its problems have been, so they don't come in fresh as someone who has never paid attention to Union affairs, and has acquired no knowledge of Union

affairs and is suddenly—for example, he Financial Secretary of the Union is covered by a bond, responsible for handling large sums of money, and doesn't know the slightest idea of what it is all about.

The Union meeting has been, with in the Union, the best place for any member—any member, of course, can come—to acquire some knowledge about the affairs of the Union. They are held once a month. There is certainly no terrible imposition to go, it takes a couple of hours. You sit there and you get reports of [15] all of the activities of the Union, all of the issueus and what the Union is all about.

So the Union adopted the rule in its International Constitution situation which says that in order to run for Local Union office you must have attended half of the meetings during the preceding three years. In other words, you must have gone on an average of one meeting every two months.

Now, I might add that that rule was adopted at a convention of the Union. Delegates were there from all of the 3700 Local Unions. They voted to adopt the rule and that is how it got into our Constitution.

Now we are confronted immediately with a very difficult dilemma, because the Secretary of Labor does not say to us that the rule of our Constitution is unlawful per se. He says, "I, the Secretary of Labor, am going to undertake to examine, with respect to each of your Locals, how the rule works in each particular item, and if I think in the circumstances of that election it proved to be unreasonable, then I am going to sue you."

Now, that obviously causes us a dilemma. We can't use the Rule at all if there are going to be some cases where the Secretary is going to sue us, because we can't conduct our own trial in advance of every election and decide whether or not to use it there would be [16] reasonable.

So we think the rule really has to be looked at more broadly, and it really was before this Court somewhat broader. We think what is before the Court is not whether the rule is reasonable in this case, but whether the rule is reasonable.

We think the determination is really the same determination, because we think you determine the reasonableness of a rule by looking to the purposes that it serves and whether those purposes are rational purposes. We think here the Court's discretion is somewhat narrower, I think, than the Secretary of Labor contends. Neither the Secretary nor the Court, under the statute, is set up as a regulator of Union affairs. Indeed, Congress went out of its way to say that it was prescribing very restrained and minimal impositions on the way Unions' affairs are run.

As Congress put it, "We're making the minimum intrusion necessary to assure democratic Union affairs."

Now, this Act we are under is the Landrum-Griffin Act. It was adopted to cure what were found to be some very terrible abuses, the way some Unions were conducted.

There is no suggestion in that Act that one [17] of those terrible abuses was the Unions wanted some of their members, by attending meetings to acquire some knowledge of the Union before they ran for office. We think it takes a rather strange construction of the statute to conclude that this is one of those abuses.

Indeed, the evidence, we think, that Congress didn't intend to reach this kind of thing is that parenthetical clause, following the phrase "every member shall be entitled to run for office" there is in parentheses "subject to reasonable rules uniformly applied".

I think the clear legislative history suggests this. Congress was allowing Unions to have reasonable rules, but it was not going to allow them to be arbitrary and to let their friends run and not their enemies. That we think is all this is about.

I might say there have been a couple of other cases in which the Secretary has attacked meeting attendance rules by other Unions. Those cases developed in a fashion so completely different from ours that I really think you can't translate one to the other.

Those were cases where the Union has a very strenuous rule. It pays the incumbent officers to attend meetings, so they have got every incentive in the world to go. When you look at the results, the only [18] people that

qualify under the rule are the incumbent officers, so, indeed, they run unopposed on and on.

The Court said, in looking at that situation, "Well, that is not what we call a very democratic situation. We think that rule can't be very reasonable."

As we'll make clear here in this case every office was a contested office. There were probably over 20 per cent of the members of the Union, if not more, who had either attended the meetings or were entitled to the credits. There have been several elections since the one the Secretary is challenging in this Union, and every one was a contested election.

We have prepared some statistics we will introduce on how this Union's rule is applied in other situations, in other Locals. With very few exceptions every election is contested, a contested election. We just don't think there is anything very unreasonable about it. We will put on some evidence about this. But that is basically our position.

The second issue that the Secretary is raising is the claim that the rule is not uniformly applied. Basically the claim is really a two-prong claim. There is the claim that one person did correctly and was found to be eligible, and one person incorrectly was found to be ineligible. Both of those occurred on calculated [19] arithmetical computations, with five laymen in the Union serving as its election committee, had to make in determining whether people had met the meeting attendance requirement rule.

We think it is clear that one of the Secretary's claims is clearly wrong. We'll put on evidence of that. They claim that one individual, who was entitled to be on the ballot, was left off. We will put on, I think, substantial evidence that will demonstrate the Secretary is just wrong.

The other case, the person who got on and the Secretary says shouldn't have been on, I think we have determined the Secretary was right about that. There was one man, an arithmetical error was made and he appeared on the ballot and he probably should not have. Happily —the same point of this lawsuit—he lost.

So though he didn't belong on the ballot, the fact that he was on the ballot did not affect the outcome. His opponent won the election, in any event. So it seems to us no relief is required for that problem.

* * * *

[26] NICHOLAS D. HANTZIS,

a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

* * * *

BY MRS. JANAVS:

Q. Mr. Hantzis, where are you employed?

A. Loud Division of Howmet Corporation, 887 East Second, Pomona, California.

Q. Were you employed by the same company during the period August 1965 through June 1967?

A. I was.

Q. And during this same period, August 1965 through June 12, 1967, were you a member of Local 6799 United Steel Workers of America?

A. I was.

Q. When did you first become a member of this Local?

A. In May of 1965 when the Charter was issued.

Q. Did you do any work in connection with organizing this particular Local?

A. I did.

Q. Can you tell the Court, as briefly as you [27] can, what you did along those lines?

A. Prior to the winning of the election I was one of the original volunteer organizers when the election was lost previous to the issuing of this Charter.

Q. During this same period we have been talking about, August 1965 through June 12, 1967, you were Recording Secretary of Local 6799, is that correct?

A. That is correct.

Q. To your knowledge, from the time that this particular Local was organized, June 12, 1967, was the Constitution or By-Laws of the Union distributed to its members? This is the period from August '65 to June 12, 1967.

THE COURT: You mean at any time during that period?

MRS. JANAVS: Yes.

THE COURT: Were the By-Laws and Constitution distributed to the members?

THE WITNESS: I could say to my knowledge there were some. The exact quantity and amount I do not know.

BY MRS. JANAVS:

Q. Do you have any estimate as to how many might have been distributed during that period?

A. The only ones I can positively say is the [28] initial 12 issued to the Local under its Charter.

THE COURT: Wait a minute. Excuse me.

You say the 12 that were issued to the Local under the Charter. They were distributed, you say, those 12?

THE WITNESS: Those 12 were issued out to the officers and the—

THE COURT: The officers and who? The directors or—

THE WITNESS: —the—what it is? The Grievance Committeemen.

THE COURT: The officers and Grievance Committee, is that it?

THE WITNESS: Yes.

THE COURT: How many members were there in the Local in 1965, approximately, do you remember?

THE WITNESS: Approximately 575, 600.

THE COURT: And how many in 1967?

THE WITNESS: I think it was approximately the same figure, up or down.

THE COURT: A few. All right. Go ahead.

BY MRS. JANAVS:

Q. Now, other than these officers and the Grievance Committee getting these 12 copies, to your [29] knowledge did any member of the Local who were not officers or the Grievance Committee, were they given copies of the Constitution and By-Laws?

A. I heard at a later date there were some distributed. I personally have no knowledge—

Q. During that particular period or subsequent?

A. I'd say it was toward the latter part of that period.

Q. As regards members trying to obtain access to these copies—to the Constitutions or the By-Laws, to your knowledge did anyone—I am talking about in your capacity as Recording Secretary—to your knowledge did anyone attempt to obtain copies of the Constitution and By-Laws?

A. There was one attempt by a number of men to authorize one person to pick up some Constitutions and this was denied. The members would have to attend the meetings to obtain their own Constitutions.

Q. Do you know if Constitutions were ever distributed to these people?

A. This I do not know.

THE COURT: I'm not quite clear. You say they had to attend the meeting to obtain a Constitution.

[30] Were they distributed at the meeting? If someone attended the meeting and asked for a copy of the Constitution, were they given it, is that what you are saying?

THE WITNESS: It is quite possible. To my knowledge I had not seen this done.

THE COURT: I thought you said a minute ago that they were told when asked for a Constitution, or this person was when he asked for a copy of the Constitution and By-Laws, he was told he would have to attend the meetings to obtain one. Is that what you said?

THE WITNESS: That is correct. The people who asked him to pick up their copy were to be informed they would have to show up at the meetings, in order to obtain a copy of the Constitution.

THE COURT: All right. Then the converse of that, I assume, is that if they did attend the meeting they could pick up a copy?

THE WITNESS: This is the assumption I gathered from conversation.

THE COURT: Did you ever see anybody receive a copy there at the meeting, at a meeting?

THE WITNESS: No, sir, I did not.

THE COURT: As the Secretary, didn't you have copies of the Constitution?

[31] THE WITNESS: No, sir.

THE COURT: Who had them in their possession or in their custody for the Local Union?

THE WITNESS: It would have been the President, the Financial Secretary and Treasurer, who handled these—

THE COURT: And you only know 12 copies having been received?

THE WITNESS: Yes, sir.

THE COURT: All right. Go ahead.

BY MRS. JANAVS:

Q. As Recording Secretary you were present at most of the meetings that were held by the Local during the period August '65 to June '67?

A. That is correct.

Q. Did you see anyone receiving a Constitution at any of these meetings at which you were present?

A. I did not actually see that. I saw people with Constitutions. Were they obtained them I do not know.

Q. Would those have been officers or Union members?

A. I would say both.

Q. And as regards the By-Laws, did you see anyone with By-Laws or obtaining By-Laws at that Union [32] meeting that you were present at?

A. The only By-Laws to my knowledge received were the general By-Laws received with the initial Charter.

Q. The 12 copies or so?

A. Yes.

* * * *

[34] BY MRS. JANAVS:

Q. Now, to your knowledge, Mr. Hantzis, from August 1965 to June 12, 1967, was there any record kept for recording what members attended a particular meeting?

A. Yes, there was a regular attendance record at the entrance or the doorway.

Q. Now, would you describe what this attendance record—is that what it was called, attendance record or attendance register?

A. Register.

Q. Would you describe for the Court what this [35] attendance register looked like, what it consisted of and so on?

A. Normally consisted of ruled or lined paper that was filled in by the members signing in as they entered. This register was counted at the end of the meetings, lined off, dated and the totals entered.

Q. Was it a bound book?

A. It was a loose-leaf binder that you entered the registers through the holes punched in the paper.

Q. Was the whole binder placed on the table each time?

A. No, ma'am, just the individual for that particular meeting.

Q. Just a page was put by the door and everyone would sign on this as they entered?

A. That is correct.

Q. Was everybody reminded to sign this register as they entered by anybody at the door?

A. The guard or the guide would ask everyone to please register.

Q. To your knowledge did people take this seriously and did they always sign when they went to a meeting?

A. With a few exceptions, I imagine almost [36] everyone did.

* * * *

[38] THE COURT: All right. Who is the one—is it either one of them that is in charge of this register? Does a man sit there with the register in front of him for the signing?

THE WITNESS: No, sir. The register is on a table —in this case it was a shelf against the wal, and he stands close by to remind everyone to sign it.

THE COURT: Anybody coming in, he reminds them before they go into the meeting to sign the register?

THE WITNESS: That is correct.

THE COURT: All right. This man is an [39] officer?
THE WITNESS: Yes, sir.

* * * *

[41] Q. To your knowledge as of August 1965, which is the first meeting that was actually counted for purposes of eligibility, as of that date had the members been advised they would have to attend at least one-half of all the regular meetings in order to qualify as a candidate, unless they were within one of the excuses allowed by the Union?

A. Prior to August of 65 they were advised in a general manner that those that attended the initial meetings before and immediately following when we received our Charter.

Q. To your knowledge there was no general notice on the bulletin board, or anything of that type, advising everyone that they would have to attend one-half of the meeting in order to qualify as candidates in the [42] next election?

This is now August 1965, when the first counted meeting was held.

A. Not to my knowledge. Being a newly chartered Union we had no meetings so that there was at that election no necessity of having attendance record; no one attended anything.

Q. I believe you misunderstood my question.

I was trying to find out as of August 1965 or in August 1965, did anyone advise the members of this new Union, new Local Union, that they would have to attend half of the meetings for the next approximately two years, in order to qualify as candidates in the 1967 election, which would have been the next election?

A. Yes, this was stated at the meetings.

Q. This was stated at the organization meetings?

A. At the regular meetings at that time.

Q. August 1965?

A. Yes.

Q. To your knowledge, was this same type of notice posted any place or made known to the membership at large, rather than just those who attended the meeting?

A. Approximately the month of May of 1966 I person-

ally made up a notice and posted it on all Union [43] bulletin boards.

Q. This was in May of '66, not when the Union was first organized and had its early meetings in late 1965?

A. That is correct.

Q. So at the time you posted the notice in May of '66 about the attendance requirement, this was almost less than a year prior to the '67 election, right?

A. That was the reason I posted the notice. There were 13 remaining months which would have qualified, under my interpretation, every man to be eligible for office.

Q. In other words, if they had attended every meeting that followed they could still make it?

A. Yes, ma'am.

Q. Now, as regards excuses for non-attendance of meetings, in order to get credit as if one had attended, one of the excuses was working overtime, is that correct?

In other words, if a person worked overtime a meeting night, under the Constitution and By-Laws they should get credit for that meeting that took place that night, is that correct?

MR. GOTTESMAN: Your Honor, I object. The question is leading. I wouldn't object to the fact that it is leading but it misstates the constitutional [44] requirement.

THE COURT: Is what she said correct?

THE WITNESS: May I say it this way, sir: The Constitution states that neither death or illness, you must be working overtime or on Union duties to be excused.

THE COURT: So illness doesn't excuse you?

THE WITNESS: That is correct, sir.

BY MRS. JANAVS:

Q. But overtime is one of the excuses, is that correct?

A. Yes.

Q. To your knowledge were the Union members ever advised how much overtime they would have to work on a particular meeting night before they would get credit

for having attended a meeting that they did not attend because of working overtime?

A. No, ma'am.

MRS. JANAVS: That is all I have of this witness.

THE COURT: Cross examine.

* * * *

[50] MR. GOTTESMAN: There are people working almost all the time in the place.

THE COURT: Yes.

MR. GOTTESMAN: So what the Union does each month is it holds two meetings.

THE COURT: Two meetings.

[51] Mr. GOTTESMAN: Holds a meeting—originally held a meeting in the afternoon or, around the latest, the early evening for people that worked during the day, and then initially, at least, it held a meeting very late at night, in the early hours of the morning, for the people that worked until midnight.

* * * *

THE COURT: Did they cover the same business at the swing shift meeting as the meeting earlier in the day?

THE WITNESS: Yes, sir. In attempting to explain to ourselves, we arrived at the conclusion it was a split meeting, not two separate meetings. It was the same regular meeting, just two groups attending at different times.

THE COURT: The swing shift meeting was, in effect, a repetition of the meeting earlier in the day?

THE WITNESS: Yes, unless new business arose from the swing shift members themselves.

* * * *

[54] Q. Now, during the course of meeting that took place, let's start now with right after the Local [55] Union was chartered or right at about the time the Local Union was chartered, you mentioned that statements were made at meetings about the importance of attending and its relevance for eligibility, is that correct?

A. I did.

Q. Can you tell us who made those statements?

A. To the best of my knowledge the staff representatives, at that time Rex Parker, was covering the general provisions of the Constitution and what membership consisted of.

Q. Can you tell us in substance what he said about the meeting attendance rule?

A. I think he read it from the book, that it would require 50 per cent of the meetings held.

Q. Did he also read the provision about excused absence if you were working during the meeting?

A. I don't remember, but I would say from knowing the man, yes, he would have read it in its entirety.

Q. Now, can you tell us approximately which months these meetings took place in in which this happened, Rex Parker read the constitutional provisions?

A. It would have been prior to the Charter and the month immediately after and the following month, right there while we were explaining, getting the word across of what the organization consisted of.

[56] Q. This would be May or June of 1965?

A. Yes.

THE COURT: Are you saying it was May or June of '65 and also after August?

THE WITNESS: No, I said possibly July, also.

THE COURT: Oh, I see. How many times did he read it, once or twice or three times, or do you remember?

THE WITNESS: I don't recall.

THE COURT: More than once?

THE WITNESS: I can't be positive of that, either, sir.

THE COURT: All right.

BY MR. GOTTESMAN:

Q. Did you attend both the day meetings and the swing shift meetings on these occasions when Rex Parker did this?

A. I would say yes. One of the meetings was held for the entire working group and I think the others were split.

Q. Can you give us a rough estimate of how many of the members attended the meetings during the months?

THE COURT: Those months?

[57] BY MR. GOTTESMAN:

Q. During the months of May, June and July, 1965.
A. I would say roughly two-thirds.
THE COURT: Two-thirds of the members?

BY MR. GOTTESMAN:

Q. That is two-thirds of all the employees?
A. A total—yes, sir.
Q. We might clarify one thing.
Does the membership of this Local Union consist exclusively of the employees at this one company, H. W. Loud Division of Howmet?
A. That is correct.
THE COURT: When you say two-thirds, we're talking about roughly 350?
THE WITNESS: Roughly that total. That amount in two meetings, or whatever the one was.
THE COURT: All right.

BY MR. GOTTESMAN:

Q. Now, subsequent to those initial meetings—I'm talking now about August 1965 and forward from that date—were there occasions at the regular Local Union meeting when one or another of its officers again referred to the meeting attendance requirement?
A. Undoubtedly at some time or other. I [58] myself or one of the other officers.
Q. You say "undoubtedly", do you recall such meeting taking place in which such statements were made?
A. Let's say I couldn't tell you what meeting but I know they were made at one meeting or another.
Q. Can you give us a rough estimate of how many times during the period August of '65 through April of '67 such statements came up?
A. It would be a guess if I try to make an estimate.
Q. It was more than one or two times, I gather?
A. Say several, but—
Q. Now, you mentioned in some of these instances it was you as Recording Secretary who made the statements?

A. Most likely in reference to the legislative educational program when we came across this, yes.

Q. Can you tell us in substance what you said on the occasions when you said it?

A. Roughly what the Constitution says it is. They are required to make the meeting and not even death is an excuse.

Q. Did you mention if they were working during the meeting that is an excuse?

[59] A. I probably did, because that is in the context of the entire—

Q. Incidentally, so we can clarify one thing, on direct examination you said that the Constitution provides you get credit for the meeting if you were working overtime. That is not quite exactly precise, is it?

It provides you get credit for the meeting if you were unable to attend because of working?

A. Because of your work schedule, or something of that sort, yes.

* * * *

[60] Q. During the period August '65 to April '67, do you recall any officers other than yourself making any statements at Local Union meetings about the eligibility requirements for running for a Local Union office?

A. There were undoubtedly mention several times because we would get into discussion about this and we would emphasize—all the officers more or less emphasized the requirements.

Q. Again the requirements being the 50 per cent meeting attendance or working during meetings, is that correct?

A. That is correct.

Q. Now, were there also statements made during that same period with respect to the signing of the attendance register?

A. Everyone was requested to sign it several times. I don't recall exactly what the specifices were.

Q. There were mentions of the fact it should be signed?

A. Yes.

Q. From the floor or in the regu
meeting from the chair, I assume,
officers?

A. Manly from the officers.

Q. Were there any requests mad
meetings to those in attendance to t
bers who were not attending and en
ance at the meetings?

A. Normal procedure to start me
try to get attendance up, yes.

Q. Were such drives promoted
during the period August '65 throug

A. Let's say they were attempte

Q. You mentioned on direct that
I believe you said in May 1966, whe
to be posted with respect to the eli
is that right?

A. I wrote and posted a notice
ment was such that after that mont
been able to make the eligibility list.

Q. In other words, someone wh
a meeting before would now have to
order to—

A. That is correct.

Q. That would not be true of t
attended some, is that correct?

A. That again depends. If he d
ther meetings—

Q. What it ultimately resulted i
to have attended so many meetings c

A. That is correct.

Q. Do you recall—I gather yo
copy of that notice, is that correct?

A. I may have. I wouldn't kno

Q. You don't have it with you

A. I do not.

Q. Do you recall the substance
ally what it said?

A. I think I tried to impart the
ganization was for the members a
to participate you had to become
become passive and stand back and

ular discourse of the
or from one of the

de during [61] these
talk with other mem-
ncourage their attend-

embership drives and

by this Local Union
gh April '67?
ed to be promoted.
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no had never attended
o attend all of them in

those who had already

didn't attend any fur-

in was he [62] needed
over the entire period?

you no longer have a
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here today?

e of that notice, basic-

he idea that a labor or-
and "in order for you
e active." You couldn't
d wait. Anyone wishing

to do so would have to qualify himself by becoming eligible. That the deadline was as of that month, for those who had not attended.

Q. Did you recite in the notice what the eligibility requirements were?

A. It was copied verbatim from the book.

Q. Now, you also mentioned or talked a little bit about copies of the Constitution of the International Union.

Did that Constitution set forth in it the [63] eligibility requirements?

A. It does.

Q. You also referred to the general or standard By-Laws.

Does that set forth the identical meeting attendance requirement?

A. I think it does.

Q. Now, you told us there were 12 copies of the Constitution that the Local received with the Charter.

A. That is right.

Q. And you also referred—and I got a little confused—to the possible distribution of Constitutions at the meeting.

To your knowledge did the Local obtain an additional supply of Constitutions from the International Union?

A. Let's say they were supposed to have been ordered on a motion from the floor by the members.

It was said that they were already delivered and passed out. This I had not seen myself.

Q. There was a motion on the floor to order a supply of Constitutions from the International?

A. That is right.

Q. And you say it was said that they were, in fact, ordered. I gather you personally don't know whether [64] they were ordered or not.

A. I could assume this because there was a check issued for merchandise, but as to seeing the physical objects—

THE COURT: You were Secretary, weren't you? Who carried on the correspondence?

THE WITNESS: The correspondence was carried on

by the Secretary. But the ordering of supplies, and et cetera, is handled by the Financial Secretary and officers.

THE COURT: The Financial Secretary?

THE WITNESS: Yes, or the Treasurer. I am not too sure of that.

THE COURT: All right.

BY MR. GOTTESMAN:

Q. Does the Financial Secretary report to the Local Union meetings the actions he has taken, in terms of disbursing the monies of the Local Union?

A. Yes.

Q. So it would become incumbent upon him, if he ordered the Constitutions and sent a check for them, to so report to the Local Union members, isn't that correct?

A. Right.

[65] Q. Did he give such a report in the meeting you attended?

A. He did.

Q. Subsequent to his reporting that he had ordered them, do you recall any report that they had arrived?

A. Yes, there was mention made they had arrived and some had been distributed.

Q. To your knowledge were copies of the Constitution kept at the Local Union meetings so that people could pick them up at the meetings?

A. Let's say I was pretty busy. I imagine they were. This was so stated.

Q. It was stated at the meeting?

A. Yes, sir.

Q. Subsequent to the ordering and obtaining of Constitutions, were there ever to your knowledge any complaints by members that there were not sufficient Constitutions for those who wanted them?

A. I don't know about them saying there wasn't sufficient. There were some complaints that they did not receive one.

Q. Is this the reference you made to on direct about the people who were told to go to the meeting to get the Constitution?

[66] A. There were some others besides those.

Q. Did they complain to you about that?

A. Yes.

Q. Did you undertake to supply them with the Constitution?

A. Yes.

Q. And did you?

A. Yes.

Q. Are there any complaints you received from people who said they didn't have a copy which was unfulfilled?

A. Yes, because the copies I obtained I couldn't get a quantity like that. I picked them up from other Locals that had excess on hand.

Q. I gather there was a supply available at your Local, isn't that correct?

A. Yes.

Q. And they were in possession of one of the officers, other than yourself?

A. Yes, sir.

Q. Did you request some of those in order to give them to people who asked you?

A. I think I got four or five, and then they were gone.

Q. You say they were gone, the four or five [67] you got?

A. I mean all the copies were out after that, there were no more left.

Q. It was reported to you that the Union no longer had copies?

A. That is right.

Q. Do you recall about when that was?

A. No.

Q. Do you have any estimate at all—

A. Sometime in the latter part of '66, early part of '67, or whenever.

Q. So that you have some knowledge then that the Union no longer has—or at that time no longer had copies of the Constitution for distribution?

A. Yes.

Q. Now, during the time or beginning with the time that you joined the Steelworkers Union and running up

until the time of the 1967 election, did you regularly attend the Local Union meetings?

A. With the exceptions when I was excused or absent.

THE COURT: Wait a minute. With the exception of the time you were excused or absent.

Can you give us some idea as to how many meetings you did not attend?

[68] THE WITNESS: This could have been maybe four or five at the maximum.

THE COURT: That you did not attend?

THE WITNESS: Yes.

THE COURT: Over what period, now?

THE WITNESS: Over the period from '65 through '67.

THE COURT: August 1965 to June of '67, is that right?

THE WITNESS: Yes, sir,—or from May of '65 on.

THE COURT: You missed only four or five?

THE WITNESS: Yes, sir.

BY MR. GOTTESMAN:

Q. Can you tell us in general terms what took place at those meetings?

I don't want, obviously, a blow by blow. But what kind of matters were discussed at the Local meetings and what kind of business was conducted?

A. I read all communciations. Any action required was taken. We discussed any business on hand, anything the floor members brought up.

Q. Was there a Treasurer's report at the Local Union meeting?

A. Treasurer's report, yes, sir.

[69] THE COURT: Each month?

THE WITNESS: Each month.

BY MR. GOTTESMAN:

Q. I meant to ask you, that notice that you posted setting out the eligibility requirements—

A. The plant has seven Union bulletin boards. There was one posted on each board.

Q. Now, are these seven bulletin boards the bulletin boards then to which the Union posts any of the notices of importance to its members in the plant?

A. Let's say they are supposed to be. At times additional copies are posted in other places.

Q. Now, is it a fact at every Local Union meeting a reading of the Minutes of the last meeting and your reading of the communications, there then follows a report of the officers?

A. This is right.

Q. Is the first such report the report of the Financial Secretary?

A. This sometimes varies, dependent.

Q. One of them would be—

A. One or the other.

Q. What would the Financial Secretary be reporting about to them, to the membership?

A. The funds we had on hand and—I don't [70] recall the form. It's a balancing of the books.

Q. Now, does he—is it he or the Treasurer who has to get approval from the membership for the expenditure of funds?

A. Everyone in the United Steelworkers has to have approval before they can expend funds.

Q. So that to the extent there are expenditures to be made during a given month or have been made and need approval, are these submitted to the membership for their approval at that meeting?

A. I'd say that the one report gives the list of checks disbursed. Some of these are already disbursed. They are voted on.

And then from the floor, during the course of the meeting, there may be action taken to receive approval from the members on next month's or future disbursements.

Q. Can you tell us roughly how much money is being handled by the Local Union on a monthly basis?

Are we talking about a few hundred dollars or are we talking about several thousand?

A. You are talking in terms of thousands, when you take the dues structure and 600 members. Roughly between twelve and sixteen hundred dollars a month comes to the Local from the International.

[71] THE COURT: Before we get too far away from this, may I ask about these bulletin boards.

Are there any of those bulletin boards in the plant?
THE WITNESS: They are all in the plant.
THE COURT: They are all in the plant?
THE WITNESS: Yes.
THE COURT: All seven?
THE WITNESS: Yes.
THE COURT: Not at the Union Hall?
THE WITNESS: No, sir, it is all within the plant.

BY MR. GOTTESMAN:

Q. Do you have any recollection at any given time how large the treasury, the total treasury of the Union might be?

MRS. JANAVS: Your Honor, I'll object to that as immaterial and irrelevant.

I think we are getting far afield.

THE COURT: What is the materiality of it?

MR. GOTTESMAN: Well, what I would like to show —and I could do it as easily with this witness as with another—is, you know, the responsibilities of the officers and what happens at the meetings which [72] would, in fact, qualify or would be a relevant factor in determining that someone would be qualified to run for office.

THE COURT: What does the amount in the treasury have to do with that? That is the point.

MR. GOTTESMAN: I want to show this is not a de minimus thing we are talking about.

They are debating expenditures—

THE COURT: He said about sixteen hundred dollars a month they get from the International.

Is that from the dues? That is your share you get back?

THE WITNESS: That is returned from the dues, yes, sir.

THE COURT: That is your share you get back?

THE WITNESS: Yes.

THE COURT: I really don't see—in view of the objection, I will have to sustain it, unless you can show me the materiality.

BY MR. GOTTESMAN:

Q. Are there on occasions debates about whether or not certain expenditures of funds should be made?

A. Quite often.

[73] Q. These, I gather, are resolved by a membership vote at that meeting?

A. Let's say the majority of the time, yes, sir.

Q. Now, there is then something called the Treasurer's report. I am not sure I'm clear myself on the separation of funds between the Financial Secretary's report and the Treasurer's report. If you would help me on that I would appreciate it.

A. Let's see, one is a monthly trial balance and it balances your book and brings it up to date, cash on hand, cash received, cash expended, cash present at the end of the month.

The other is a record of disbursements.

Q. As I understand the distinction, one of them actually holds and spends the money and the other one keeps the books and accounts for it, is that correct?

That is probably too simplified.

A. Yes, this is basically, If I understand you, the function laid out by the International.

Q. I gather it is sort of a system of checks and balances. At least two people, one of whom keeps the books and the other of whom keeps the money?

A. Correct.

Q. Now, then comes, as I understand it,—or [74] at some point in the meeting does there come a Trustees' report?

A. Let's say that at least every quarter there is one and regularly whenever there is anything to report, yes.

Q. What are the Trustees reporting about, when they report to the meetings?

A. The Trustees' main function is care and keeping of the property and auditing of the records.

Q. It is about those subjects they report at the meeting?

A. Yes.

Q. Does there come during the course of the meeting a report of the International Representative or Staff Representative?

A. Yes.

Q. Is he an employee of the Local Union or is he an employee of the International?

A. An employee of the International.

Q. Can you tell us in general terms the range of subjects about which he would be talking at a local Union meeting?

MRS. JANAVS: I will object, your Honor, again on the ground this is not material or relevant, because, as we know already, a person could qualify even [75] without having attended a single meeting, assuming they worked overtime every meeting night.

THE COURT: I suppose this is general background. You can cross examine him. You can ask him, does his International say so and so and so and so, and let's get right to it.

BY MR. GOTTESMAN:

Q. Does the International Representative report to the membership on the affairs in general of the International Union and activities on a nationwide basis of the Union, on the existence of strikes at other locations, collective bargaining reports and results at other locations?

A. Not as a whole. Specifically as these circumstances are of importance in his judgment.

Q. Does he also report on specific events relating to your Local Union, such as the status of grievances that are pending with the company?

A. He backs up or covers the Grievance Chairman's report.

Q. Then we have a report of the Grievance Chairman. Is it the function of his report to describe to the membership the grievances which are then pending against the company?

[76] A. That is correct.

Q. And these are grievances relating to alleged violations by the company of the collective bargaining agreement?

A. This is correct.

Q. And are there, in fact, a number of such grievances, as a matter of course, generally in progress, pending?

A. Almost everywhere, yes.

Q. And of course here?

A. Yes.

Q. Are there then on occasions standing committees, such as the Finance Committee, Workman Compensation Committee and the Welfare Committee and Safety Committee who report to the Union meetings about the specific subjects covered by their committees?

A. Yes.

Q. Is there a section of the meeting devoted to unfinished business, in which pending matters before the membership are debated and ultimately resolved?

A. Yes.

Q. And then is there a section of new business, in which new matters which have arisen require membership action which are discussed and resolved?

A. Yes.

[77] Q In your judgment, Mr. Hantzis, could a man who had not attended the Union meetings assume the office of President or Vice President or Financial Secretary of this Union and fulfill it competently?

MRS. JANAVS: Objection, your Honor. I don't think that one man's opinion on this is particularly relevant or establishes whether or not a person could.

I would assume it would depend on the individual involved and I would think it would be for the membership to decide when they vote for a particular office, whether the candidate is qualified or is not qualified to hold the particular office.

This is what the Supreme Court said in one of the cases we cited, the membership should decide it.

MR. GOTTESMAN: In fact, your Honor, this is a debatable fact. Our membership at our convention decided it by voting to have the meeting attendance requirement. They voted that it was relevant.

THE COURT: Well, does it make any difference? What would be the effect if he said, "No, I don't think he could" or if he said, "Yes, I think he could"?

It depends on what he says that would affect your argument. You'd cast it aside if it were unfavorable and if you thought it was favorable, why, you [78] would use it. But I don't really see what he thinks about it really is going to control, is it?

MR. GOTTESMAN: OK.

THE COURT: That is something I have to determine, I suppose.

BY MR. GOTTESMAN:

Q. Mr. Hantzis, you were a candidate in 1967 for the office of President, is that not right?

A. I was.

Q. Can you tell us who your opponents were?

A. Kenneth Rose and Donald Redell.

Q. Were any other persons nominated for the office of President at the Local Union meeting?

A. To the best of my recollection there was one declination, but I would have to verify that by checking records.

THE COURT: Do I understand there were three nominated?

THE WITNESS: Three nominees were accepted.

THE COURT: Yourself and—who is it, Mr. Rose?

THE WITNESS: Rose.

THE COURT: And who was the other one?

THE WITNESS: Redell.

[79] BY MR. GOTTESMAN:

Q When you say there was one declination, in other words, there may have been another person whose name was proposed but said he didn't want to run?

A. Yes, that is correct.

Q. Were there any candidates whose names were proposed and who were ruled ineligible by reason of not satisfying the meeting attendance requirement?

A. You are speaking now of the—

Q. Office of President.

A. Not to my knowledge.

* * * *

[96] REDIRECT EXAMINATION

BY MRS. JANAVS:

Q. Mr. Hantzis, do you recall approximately when this motion to order the Constitutions was made, what month and what year, approximately?

THE COURT: Motion to what?

MRS. JANAVS: Motion to order the Constitutions.

THE COURT: You mean copies of them?

MRS. JANAVS: Yes.

THE COURT: All right.

THE WITNESS: I don't recall. It would be in the Minutes.

BY MRS. JANAVS:

Q. Do you recall at all approximately when it was that this check was issued for the copies of the Constitutions you testified about and the report made by the Financial Secretary that this had been done?

A. It would have been within the subsequent months, as the order was made, ordered and completed or delivered.

Q. But you can't say whether it was in '67 or '66 or '65?

A. I think it was '66, I'm not positive.

Q. Sometime in '66?

[97] A. It would have been toward the latter part of the year.

• • • •

Q. Excuse me. I'll rephrase it.

Now, was there a time when the Union officials inquired of the International Union as to how many meetings a member of Local 8799 would have had to attend in order to qualify as a candidate in the 1967 election?

A. I think that was the month preceding the election itself or somewhere within a few days or even a week or so of that time.

The question—I brought the question to the floor, that they contact the International on it myself, and this was shortly after nominations before the election.

Q. And the question was how many meetings would a particular member of your Local have to attend in order to qualify in that election, is that correct?

A. Correct.

Q. And do you know, did the reply from the [98] International come shortly thereafter?

A. The reply was announced. I don't recall seeing it myself. It would be from August on of 1965.

Q. How many meetings would have to be attended during that period in order to qualify?

A. The Constitution would still hold good, 50 per cent.

Q. It would be the August meeting that would be the first one to count?

A. Yes, ma'am.

Q. And this was approximately one month before that actual election?

A. Between nominations and election, yes, sir.

Q. After nominations and before the election?

A. Yes.

* * * *

[99] BY MRS. JANAVS:

Q. Now, getting back, you testified in May, June and July of 1965 the Constitution might have possibly been read by Mr. Parker at the Union meetings for those months.

A. Yes.

* * * *

Q. Mr. Hantzis, the people that attended a meeting in May, June and July of '65, were there not a substantial number of people that attended one meeting that also attended the other meetings mentioned?

A. Yes.

Q. When you say two-thirds of members approximately attended these meetings, were you talking in terms of the total number of people that attended all these [100] meetings or are you talking about approximately 250 different members having attended?

A. The attendance at the meetings in May, June and July of 1965 may have been different members, but there

were approximately two-thirds of the employees at each of those meetings or the combined total of the meetings, each month.

THE COURT: The average then?

THE WITNESS: The average for each month present.

* * * *

[102] Q. There was no established policy by anyone [103] in writing as to what time a person—how much a person had to work overtime in order to qualify for credit, is that right?

A. It doesn't state overtime per se. It says your employment—you must be on the job or working. You must be working.

THE COURT: We are using overtime as working. Use the word "working". Maybe that is better.

BY MRS. JANAVS:

Q. So there was no specific announcement or notice given to the employees as to how late they had to work to qualify for credit?

A. No.

* * * *

[108] HENRY A. QUEEN

a witness called on behalf of the plaintiff, having been previously duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

BY MRS. JANAVS:

Q. Mr. Queen, you are employed by the United [109] States Department of Labor, is that right?

A Yes, ma'am.

Q. What is your position with the Department of Labor?

A. I am Chief, Branch of Elections and Trusteeships, Office of Labor-Management, Welfare, Pension Reports, U.S. Department of Labor, Washington.

Q. In your work do you have any duties at all in relationship to Union election investigations?

A. I do.

Q. Can you tell the Court what those duties are?

A. Well, put briefly, when we have word from our field offices that they have received a complaint from a Union member, who has met the requirements of 402(a) (1) or (2) of the Labor-Management Requirement Disclosure Act of 1959 my branch in Washington begins to follow the progress of the investigation of that case in the field.

We have to be sure that the investigative results are received in my office well in advance of the statutory filing deadline. We try to get it in within 30 days of the deadline.

Having gotten the results in, we give it an analysis and evaluation, and then as soon as we are reasonably sure of the Title IV violations, disclosed by [110] the investigation, a letter is prepared for my signature, addressed to the President of the parent body, with a copy to the President of the concerned Local, in case of a Local investigation, and anyone else who might be an informed person, like an attorney for the Local or President of the District Council, and we notify them by that letter the nature and kind of Title IV violations that have been established, we think, as of that stage in the investigation process.

In the letter we ask for a reply by a certain date, which is again in advance of the filing deadline.

Q. Now, with respect to Local Union 6799 of the United Steelworkers, did you in the course of your work receive a complaint, filed by any member of that Local with the Department of Labor?

A. We did.

MRS. JANAVS: I wonder if the witness might be handed Exhibit 8, please.

(Exhibit placed before the witness.)

BY MRS. JANAVS:

Q. Mr. Queen, would you examine Exhibit 8, please, and state if that is the complaint which in due course arrived in your office?

A. This is the complaint that in due course [111] was received in my office.

Q. All right.

MRS. JANAVS: At this time I would like to mark for identification as Plaintiff's Exhibit 9 a letter addressed to Mr. Abel, International President, from Henry A. Queen.

THE CLERK: Plaintiff's 9 for identification.

(Document was marked Plaintiff's Exhibit 9 for identification.)

MRS. JANAVS: May the witness be handed Exhibit 9 for identification, please?

(Exhibit placed before the witness.)

BY MRS. JANAVS:

Q. Would you identify, Mr. Queen, what this document is?

A. This is the summary of violations that I sent to Mr. Abel on November 21, 1967, with a copy to the President of Local 6799, notifying them that the investigation conducted up that point in Local 6799 had disclosed certain Title IV violations.

MRS. JANAVS: I would at this time offer Exhibit 9 in evidence, your Honor.

MR. GOTTESMAN: No objection.

THE COURT: 9 is ordered in evidence.

[112] (Document marked Plaintiff's Exhibit 9 was received in evidence.)

BY MRS. JANAVS:

Q. Mr. Queen, as regard Exhibit 9, have you discussed the violation alleged in that exhibit with any Union officials or attorneys for the United Steelworkers?

A. Yes.

Q. And can you tell us the first occasion that you had any discussion with relation to the allegations made in that letter with any such officials or attorneys?

A. Well, instead of replying by letter the Union officials asked for a conference back in Washington. That

conference was arranged. It was held on December 18th, 1967, in the office of the Assistant Secretary Thomas R. Donohue.

Q. Do you recall some of the people that were representing the Union who were present at that meeting?

A. Yes, the Union was represented by Mr. Bernard Kleinman, General Counsel, by Mr. Gottesman, by Mr. Wynn Newman, an associate General Counsel and there were several field representatives there whose names I no longer recall.

Q. You were present at this meeting for the Department of Labor?

A. I was.

[113] Q. Do you recall any of the other people that were there from the Department of Labor?

A. The Department was represented by Assistant Secretary Thomas R. Donohue and his deputy, John Shinn, and Frank M. Klieler, Director of the Office of Labor-Management—

THE COURT: Mr. Tyler or—

THE WITNESS: Klieler, your Honor.

THE COURT: How do you spell it?

THE WITNESS: K-l-i-e-l-e-r. Mr. Klieler and his deputy, Mr. Leonard Lurie, L-u-r-i-e, and myself.

Now the office of the Solicitor was represented by the Solicitor himself. His name is Charles Donahue. George T. Avery, who is an Associate Solicitor. Miss Bea Block, Chief of Litigation, and Mr. Robert Lagotta, who is an attorney in the Solicitor's office.

BY MRS. JANAVS:

Q. Do you recall what was discussed at this meeting, as far as the alleged violations stated in Exhibit 9 were concerned?

A. Well, Assistant Secretary Donohue opened the meeting by telling the Union officials that the Department was concerned with the Steelworkers' three-year meeting attendance requirement, and reminded them at one [114] time they had had a two-year meeting attendance requirement.

And it seemed this one would be more apt to make it more difficult for Union members to qualify for Union office.

He also went on to say he was not making the point that the meeting attendance requirement was unreasonable per se, but in particular cases over 90 per cent of the Union members had been unable to meet these meeting attendance requirements.

In this particular case I think the percentage was something like over 93 percent had not been able to meet the meeting attendance requirement.

Now, then, the discussion, as I recall it, went to the nature and purpose of the meeting attendance requirement. Why have a meeting attendance requirement as a condition to eligibility, in the first place.

In that connection I believe it was Mr. Kleinman who said that in the Steelworkers Union it had been the feeling for some time that the members coming into a Union office should be thoroughly conversant with the nature and responsibilities of the activities being performed in the Local seeking the office, and the only way to acquire that sort of expertise was by showing interest enough to attend at least half the meetings over [115] the three-year period.

Then we went into the type of excuses the Union member could use as a justification for not having attended a meeting, and the excuses allowed were conflicting work assignments and working on Union business, I believe.

In this connection we reminded the Union members—the Union officials in the Steelworkers case it would be possible for a Union member who had attended not a single meeting to still be eligible under the excuse provision for candidacy for a Local office.

Then—let's see, we got into the specifics of 6799 and then, as I recall, we went down the list of violations I had enumerated in my letter and we pointed out that even with the meeting attendance requirement there had not been a uniform application of them in this particular case.

We cited one case where the candidate for Financial Secretary-Treasurer, I believe, had been credited with

attending seven meetings, where he had been given no credit for conflicting work assignments for four more meetings, and had he been given that credit he would have been eligible in this case.

Then we mentioned another case where a candidate for the office of Trustee, I believe, withdrew [116] because he thought he himself was not eligible and yet, according to the work records we examined, he was eligible had he been given credit for the times work assignments conflicted with the Union meeting base.

Now, there were some other matters of a lesser nature involving Title IV, but we didn't emphasize those because we didn't think they would show the effect on the outcome, the accountability for ballots and that sort of thing.

* * * *

[118] Q. Did you have any other meeting with Union officials or their attorneys covering more or less the same subject matter?

A. Yes, there was a later meeting in—

THE COURT: January 20th, wasn't it?

THE WITNESS: Latter part of January, I think, your Honor, yes. And I believe that the same representatives were there, with the possible exception that—I'm not sure Mr. Kleinman was there for the Steelworkers. I know the field representatives for the Steelworkers were not there.

Mr. Gottesman was there, I believe. Mr. Newman was there and the Department of Labor people were the same as at the previous conference.

* * * *

[119] BY MRS. JANAVS:

Q. Did you have any other contacts besides these two meetings, either in writing or in conversation, with anyone representing the Union, attorney or official of the Union?

A. Other than in the Union?

Q. Other than these two meetings that you have just discussed.

A. Oh, yes, yes. I was in contact with Mr. Newman on an average, I would say, of about three times a week from the fall of 1967 until about March of 1968, because during that period we had received a total of 12 actionable complaints against Steelworker elections, of which 6799 was just one.

On each and every one of those we had separate discussions and separate conferences. But the general feeling that Mr. Newman had, when he talked to me, was he would like to do little preliminary investigation himself before we started our investigation.

In that connection I reminded him, of [120] course, that the Secretary had a statutory mandate once he had received an actionable complaint to dispose of it within 60 days.

He was very accommodating by giving us waivers, which sometimes he delayed us, but we did have a number of discussions.

The principal thrust of these discussions was, "If you are going to take us to court on the meeting attendance issue, why isn't one case enough to test that?"

Of course, our answer had to be we evaluated each case on its merits and my job was to make the recommendation based on each and every case as I see the investigative findings, and the decision to litigate or not to litigate as the finding is solved elsewhere.

Q. During these conversations you had with Mr. Newman three time a week or so over the period of fall '67 to approximately March '68, you mentioned you discussed these other suits, too.

Did you discuss Local 6799 in any of those conversations, also?

A. Yes, Local 6799 would always come up as a case in point where we thought the meeting attendance requirement was so unreasonable as it applied here on impact.

It served to disqualify such a large [121] percentage of the membership. And we would always go back to what the Assistant Secretary told the group, namely, that we were not saying the meeting attendance requirement was unreasonable per se, but in its application to the par-

ticular situation as in 6799 it seemed to us clearly unreasonable.

MRS. JANAVE: Thank you. I have no further questions.

THE COURT: If you decide each case on its own merits and you say, as a premise, that the meeting requirement was not per se too restrictive, why, then do you take each case and say, "In this case this rule is too restrictive, in this case it is not"? How can anybody tell when the rule can be applied, the point Mr. Gottesman made in his opening statement?

THE WITNESS: Yes. Well, your Honor, the Secretary thus far has tried to avoid saying that the rule is unreasonable per se because he feels the Union should be in the best position to decide what is best for the Union.

But on impact in a particular case, if we could show that all but a handful of the would-be-candidates or members were disqualified because they couldn't meet that, we think that is unreasonable.

THE COURT: Then when you say it isn't [122] unreasonable per se, then that is just kind of window dressing.

I mean you have to say that in view of the fact the Union is supposed to be allowed to run its own business? I mean isn't from a practical standpoint, if the rule is so severe that only 20 per cent can qualify in this case, is there any reason to think that wouldn't be the rule in other cases, or do you think that the rule was improperly implemented or enforced?

THE WITNESS: Well, I think there could be other situations involving the Steelworkers with this very same rule, where they could have waived the rule, for example, and still had it on the books, for one reason or another.

THE COURT: Then in each case there comes to the Labor Department, a Union member does and says, "In this case the rule should be waived" and you are going to decide in each election, where a Union member makes a complaint you are going to decide whether this rule was going to be waived.

Is the result that I have to understand to be your position?

THE WITNESS: I don't think we want to state it exactly that way, your Honor. We want to say that the Act requires the Union to give a reasonable [123] opportunity to every member they can to run for office, nominate candidates and support the candidates of their choice.

THE COURT: I understand that.

THE WITNESS: Now then, if they have a rule that disqualifies most of the members, then that rule is unreasonable, certainly, in this particular case.

THE COURT: This rule is in their Constitution, though, isn't it, as well as their By-Laws?

THE WITNESS: Yes, sir.

THE COURT: It is something that has been applied, I suppose, for many years, throughout—

THE WITNESS: No, no, your Honor.

THE COURT: What is it?

THE WITNESS: No.

THE COURT: Since '65, anyway, hasn't it?

THE WITNESS: I don't believe this rule was applied until the June 1967 elections. This was the first time this rule was applied.

THE COURT: Before that it was only two years?

THE WITNESS: I believe that is true, yes, sir.

THE COURT: You don't know when this rule was adopted, this three-year rule?

[124] THE WITNESS: It was adopted at the 1964 convention, as I recall, but it was to be applied the first time in the June 1967 Local elections.

THE COURT: That is, all Local elections throughout the country?

THE WITNESS: Yes, your Honor.

THE COURT: All right. Thank you.

You may cross examine.

CROSS EXAMINATION

BY MR. GOTTESMAN:

Q. Mr. Queen, referring to the first of the two conferences we had in person with you and other Labor Department representatives,—

A. Yes, Mr. Gottesman.

Q. —I would like to ask whether other certain additional statements were made by the Union, other than those you have indicated, in the defense of the meeting attendance rule?

First of all, is it not true that the meeting, the first of the two meetings involved not just Local 6799 but some several cases, each of which had a meeting attendance rule practice?

A. That is correct, sir.

Q. Is it not so, that at least a substantial [125] portion of the discussion during that meeting was the Union's defense of the meeting attendance rule, as such, rather than in terms of its application, each of the specific Locals Unions involved?

A. That is correct, sir.

Q. And did not Bernard Kleinman, the General Counsel, argue as one of the reasons in support of our being permitted to retain the rule, that it was the rule adopted in the International Constitution, which would by force apply to some thirty-five hundred Local Unions, and therefore to apply it case-by-case method in deciding its reasonableness would make it impossible of administration?

A. He did make that point. The Department made a point, too, in connection with that.

Q. What was the Department's point?

A. I believe, now that you refresh my memory, Mr. Gottesman, Mr. Kleinman made the point that this three-year meeting attendance requirement was inserted in the Constitution as the result of the convention action by delegates, who represented their respective Locals, and therefore, it was the will of the majority.

I believe that it was Solicitor Donahue, I believe this time said it was incumbent upon the Union to change its Constitution if it was determined that these [126] requirements were too restrictive. That is the way I recall it.

Q. Perhaps we are not exactly on the same point.

The point I was making was not in reference to Mr. Kleinman saying it was adopted by convention action,

though, indeed, he did say that, but we would have an institutional problem if the Labor Department insisted on applying the rule on a case-by-case basis, because it would then be impossible for the International Union to administer the rule.

Do you recall his making that point, separate from the point about it having been adopted by the delegates?

A. Yes, I recall his making that point and I also recall Assistant Secretary Donohue make the point that you previously had a two-year rule, which was obviously more reasonable, but a one-year rule would be even more reasonable still.

Then I believe Mr. Kleinman said that the reason for the three-year rule was that they wanted a rule that coincided with the term of office of Local officers.

Q. Did Mr. Kleinman explain that the two years had been changed to three at the same time the term of office was changed from two to three?

[127] A. I don't recall that.

Q. Do you recall any discussion about correlation between the term of office and the length of meeting attendance rule?

A. No, I don't. I recall it having been convention action.

Q. Do you recall a discussion between Assistant Secretary Donohue and Mr. Kleinman about whether there would be more or less people qualifying under a three-year rule than a two?

A. I recall a general discussion, but again Mr. Donohue came back to the old premise that we would not say that even a two-year rule was reasonable or unreasonable, but as applied to a particular case, if it developed that all but a handful of the membership of a particular Local were unable to meet these requirements, then we would say it was unreasonable in that case.

Q. Then do you recall Mr. Kleinman arguing that it was entirely possible more people might qualify under a three-year rule than two, and it depended on which of the meetings they happened to attend? Do you recall that?

A. Yes, we argued that one back and forth. He made that point and the Department of Labor made the point

that you could have Union members who attended no [128] meetings whatever and could still qualify.

Q. That is a separate point we will get into.

A. Yes.

Q. Do you recall Solicitor Donahue replying, when Mr. Kleinman said that that he thought perhaps that might be right, that he didn t think the length of the rule changed very much the number of people who would qualify under it, since the same people who went to meetings in one year would be likely to be the ones that went to meetings for two years or three years.

A. Yes, I recall that. I also recall citing a case where you had Union members on a permanent shift that conflicted with the meeting attendance each month, and none of them ever attended meetings.

Q. Is this case before this Court one of those cases?

A. No, this isn't one of those cases. You mentioned earlier that we discussed other cases.

Q. Yes.

A. At that time we had had actionable complaints received and investigations under way in six cases.

THE COURT: You say complaints received. Do you mean on this particular type of election requirement, meeting attendance requirement?

[129] THE WITNESS: Yes, your Honor.

THE COURT: All right.

BY MR. GOTTESMAN:

Q. Are you sure, Mr. Queen, or are these things the Labor Department raised on its own?

A. These are points that were turned up in our investigation. I cannot be sure in every case whether the complaints raised them or not.

Q. You were about to tell me something you said after Solicitor of Labor Donahue said that the length of the rule wouldn't make any difference.

MRS. JANAVS: I don't believe that accurately states the testimony, but, at any rate—

THE COURT: Well, go ahead.

THE WITNESS: Well,—

THE COURT: If it is wrong, he can correct it.

THE WITNESS: We pointed out, apart from the length of the rule, if you had a segment of your local membership permanently assigned to a shift, which conflicted with the meeting attendance night, then all of those members—be they large or small—could qualify for a Union office without having attended any meeting whatever, and this would defeat the purpose of the meeting attendance requirement as stated by Mr. Kleinman.

[130] The way he stated it was the meeting attendance requirement was designed to give the would-be candidates a certain expertise about the affairs of their respective Local.

BY MR. GOTTESMAN:

Q. Do you recall Mr. Kleinman—I believe it was Mr. Lurie that was making that point most strenuously, was it not?

A. Yes, he did.

Q. Do you recall Mr. Kleinman responding that the reason credit was given to them that worked was not because the Union thought it was just as good as attending, but that it was the only alternative to disqualify a whole segment of the membership simply because they worked during meetings? Do you recall that?

A. I recall that.

Q. And do you recall he further saying that he assumed that the Labor Department would be on our backs even harder if we did not provide some excuse provision for those who could not attend the meeting because of working? Do you recall him saying that?

A. Yes, I recall that.

Q. Isn't it a fact that the Labor Department has said, in answer to inquiries from other Unions, it is necessary to provide an excuse provision for those who [131] are working during the meeting?

A. Sure.

THE COURT: Let me ask a question.

I take it this figure of 20 per cent as qualifying is just a round figure. When you discussed this matter at your meetings, that only 20 per cent qualified, if that was 20 or 18 or 17, whatever it was, or 25, was there any discus-

sion as to why the other 80 percent did not qualify by meeting attendance?

I can see where 50 per cent might not want to attend meetings and they wouldn't have any interest at all. Now, was there anything ascertained why the 80 per cent did not attend 50 per cent of the meetings, as to why they didn't?

THE WITNESS: Well, in some instances, your Honor, it had to do with work conflicts, but in this case of 6799, I don't believe that the Local had access the employees' records in all these instances, as indicated by the fact that one candidate, who thought he was not eligible, withdrew and, as a matter of fact, he was eligible and he didn't know it.

When we finally got access to the work records, he was working on a sufficient number of meeting nights to have had that number added to the meetings he attended to have qualified.

[132] THE COURT: Was there any effort made to ascertain how many of the members were qualified that had been told or that the records—or that the Union had said were not qualified? How many actually were, how many mistakes the Union had made in determining qualifications, or did they only determine the qualifications of a candidate or of a member who indicated he wanted to run for office?

THE WITNESS: The best answer I can give you now, your Honor, is that out of the membership that they had at the time of this challenged election, which I think was 571, we ascertained that there was a figure something less than 40—I believe it was 39 of all the members in this Local who would meet this meeting attendance requirement, and included among that 39 were 11 incumbent officers.

THE COURT: Then you checked to determine how many members would have been properly excused by reason of work conflict?

THE WITNESS: Yes.

THE COURT: And there were only 39 who were qualified, including those who were excused because of work conflict?

THE WITNESS: Right. There were two, I believe, your Honor, for whom proper credit had not been [133] given. One of these was a candidate for Financial Secretary-Treasurer. He was declared ineligible after he had been nominated, whereas, we determined that he had sufficient credits to have qualified.

THE COURT: Isn't the problem, though, whether the rule—I'm afraid in my judgment at this stage it isn't a question of how many qualified, because 80 per cent might not have cared about qualifying, but the question is a reasonable rule under which a person can reasonably qualify, isn't that the question?

THE WITNESS: Yes, your Honor.

THE COURT: That is the question, isn't it?

THE WITNESS: Yes.

THE COURT: It isn't so much the question as to whether more than 20 per cent or whether more than 39 did qualify. The question is could they reasonably qualify under the rule, isn't that it?

THE WITNESS: Yes. Where you have rotating shifts, as you did in 6799, I don't know how to answer that question.

THE COURT: Well, you have to face the problem. You have to take into consideration the hours of work and the Union doesn't fix that, does it?

THE WITNESS: No.

[134] THE COURT: The employer fixes that. Now, you have to consider what the Union's problems are in fixing these rules.

I can see how under the rules that a man would not have to attend any meeting if he had a work conflict all the time. He could qualify without attending one meeting.

THE WITNESS: Yes.

THE COURT: Now, that defeats what the Union says is the purpose of the rule. They want men who are indoctrinated in the work of the Union and that makes sense, of course.

THE WITNESS: Yes.

THE COURT: The thing that bothers me at this stage is you say only 39 qualified and I'm assuming that to be correct.

If only 39 qualified, that means to me that there weren't many more that wanted to qualify because if they wanted to they would have had these excuses, if they had work that interfered and they would have qualified.

Now, you are saying also that the Union did make some mistakes. That you only found what, two mistakes?

THE WITNESS: Only two I can recall, your Honor.

[135] THE COURT: That isn't very many, is it, out of 500 or so?

THE WITNESS: 587.

THE COURT: That isn't very many, is it? Human error is bound to creep in.

I'm just discussing it here because there is no jury. I'm trying to find out exactly what the Labor Department's position is and what the problems are on both sides, because I have to determine, I guess, whether this was a reasonable rule.

It seems to me the test of the reasonableness is whether an employee could reasonably comply with it.

If it were too difficult for him to comply with, why, then it might not be reasonable. But if he didn't care about complying with it and he could have within all the rules, why, then the question in my mind is, is it the fault of the rule that only 39 complied with it. That is the way I view it at this sitting.

All right. Let's go on, now.

BY MR. GOTTESMAN:

Q. Mr. Queen, do you recall at the first meeting—perhaps my only contribution, which was to argue that this rule did not disqualify anybody, because under this rule anyone can qualify by simply choosing to [136] attend a meeting every other month?

A. Yes, I remember your saying that, Mr. Gottesman.

Q. Isn't it a fact, Mr. Queen, that there are some rules in some Unions—not this one—which have the effect of actually disqualifying people, in that there is no way they can comply with such rules?

A. As, for example, where there is no excuse provision.

Q. That would be an example, that is right.

A. Yes.

Q. People worked all the time and there was no excuse.

A. Right.

Q. Or the prior office holding cases which say that only a person who has previously held office would be entitled to?

A. Right.

Q. But there was no—was there any claim made by the representatives of the Department of Labor at that meeting that there were any factors present to this case or in any of the cases that you have had that made it difficult or impossible for members to attend the meetings, if they chose to do so?

A. Except where they had these work conflicts.

[137] Q. Well, then there they got credit for them, isn't that right?

A. Yes.

Q. In other words, were there any factors that made it difficult for members to get credit, either by working or by attending the meeting, were any such factors recited at this meeting?

A. Well, I believe that there was a recitation at this meeting that the Union had not been able to get a list of the people who were on conflicting work assignments.

THE COURT: The Union could not get a list of them?

THE WITNESS: From the employer.

THE COURT: From the employer. I see.

THE WITNESS: There was difficulty encountered there, as I recall.

BY MR. GOTTESMAN:

Q. Let's clarify one thing that you responded to the Judge about.

You indicated—and I think it was an inadvertent error—that the Labor Department had checked the eligibility of every member of the Union. No such effort was made by the Labor Department was there?

I'm talking now about not only how many [138] attended meetings but how many were entitled to credits by reason for work conflicts.

A. We came up with a figure of five hundred and some members. I think it was 587 members. And then by comparison of the meeting attendance records we came up with a certain number of members who could meet the meeting attendance requirement.

Q. I believe that was 36, was it not, who had attended meetings?

A. I said 39. It could have been 36.

Q. I understood 39 to be the total of those who had attended and those who were entitled to credit. Perhaps I misunderstood.

MRS. JANAVS: 36 is what we stipulated is the correct number, your Honor, that qualified by actual attendance.

THE COURT: Was it 39 then that qualified by attendance and excuses?

MRS. JANAVS: We would not know the exact number because no one has checked employment records of all these 600 people to see if they might have all worked overtime all this time.

THE COURT: Then we don't know how many were actually qualified then under the rule, do we?

MRS. JANAVS: We would not know exactly, [139] your Honor, because not all these records were checked.

THE COURT: You don't have any idea? I mean there is no estimate at all?

So possibly more than 50 per cent did qualify under the rule, including those excused?

MRS. JANAVS: Theoretically this would be possible.

THE COURT: When you say "theoretically", it is just as possible as not possible, isn't it?

MRS. JANAVS: The problem, of course, your Honor—one of the problems—

THE COURT: I would think it would be more probable more than 50 per cent qualified, if you gave them credit for their—although not necessarily. Lots of them probably didn't want to attend the meeting. There is nothing to indicate how many wanted to attend and there is nothing to indicate how many did qualify by the excuse.

Is it the Government's position that this excusing them is not fair?

MRS. JANAVS: No, our contention along those lines is only that if the purpose of this rule is to have men that have experience and know what is going on, then, certainly, this excuse detracts from that argument, and we have people here who could have qualified—at least one person we know would have qualified but declined [140] because he thought he was not qualified to run.

THE COURT: That is one out of I don't know how many that you have actually found out about.

But there has been no check, as I understand it. There has been no general check to determine how many were qualified, including those who—when you count the excused meetings.

MRS. JANAVS: This is part of our case, that the Union has not kept records which would allow them to apply this rule or even show it is a reasonable rule to where either the Government or the Union could really go out and determine.

THE COURT: Nobody checked it?

MRS. JANAVS: In other words, this is part of our case, that the records that have been kept are not such that would, in fact, allow one to determine exactly how many might have been qualified, how many might not have been qualified and that if the Union has such a rule they should have this type of record available.

THE COURT: Does that make the rule unreasonable, because they don't keep proper records?

MRS. JANAVS: We think this is one factor to consider, because how is an employee to know ahead of time whether or not he is qualified if he doesn't know, [141] you know—

THE COURT: It would be very simple if they kept proper records. It would be very simple to keep the records. It would take some personnel and so forth.

MRS. JANAVS: If they kept proper records. Also if the employees had been advised of any National, or International policy how much overtime they actually had to put in. In other words, no one knew even up to the time of the election whether they had ordered one, two or three to be given credit for non-attendance.

THE COURT: Well, then one of your points is that the rule is not reasonable because it is not sufficiently specific?

MRS. JANAVS: The way it was applied in this case is not sufficiently—cannot—well, in other words, the way the rule was applied in this case the members did not have sufficient notice in order to become eligibile under that rule, and also to determine whether or not they were eligible under the rule.

THE COURT: All right.

MRS. JANAVS: That is part of the case. We do know only 36 qualified by actual attendance.

MR. GOTTESMAN: I would like to clarify one thing so a misconception doesn't creep in.

[142] The stipulation recites that the Company's departmental records show what hours were worked by each employee and these were checked by the Election Committee and determined which of the nominees were entitled to credit during the nights the meetings were held.

MRS. JANAVS: Those showed only nine hours, eight hours, six hours on Saturday. We will be putting that in evidence so the Court will see what it shows.

THE COURT: All right. Go ahead. I am probably ahead of the evidence. Go ahead.

BY MR. GOTTESMAN:

Q. We were talking about the computation of how many were eligible. Perhaps I can refresh your recollection on something that was discussed there, Mr. Queen.

Do you recall that we were told by one of the representatives, perhaps you, that an investigator of the Department had actually counted the meeting attendance lists to determine how many people actually attended 11 meetings and we were given figures representing the number of people who had actually attended 11 meetings. Do you recall that?

A. I believe that our discussion there was the 11 incumbent officers had attended all of the meetings. [143] I believe that is right. That is all I recall on that particular point, Mr. Gottesman.

Q. Do you recall your investigator did check overtime records for certain individuals, namely, those that had been nominated to run for an office in this election?

A. Yes.

Q. And therefore, there were a group of about eight or nine people who were nominated and did not have enough meeting attendance and therefore your investigator checked their overtime records, do you recall that?

A. Yes.

Q. Do you recall that on the people whose overtime records he checked he found some of those people had, in fact, been entitled to additional credit by reason of working?

A. Yes.

Q. Do you recall that in four or five instances, depending on how we resolved our dispute, it was found that when the additional credits were added to the meeting attendance the person got over the magic number of 11?

A. That was true in two cases, I recall.

Q. You don't recall that there were—my recollection, and see if it conforms with yours—there were nine people whose records were checked.

[144] Four of them, both the Union and the Labor Department agreed, were entitled to additional credits to put them on the ballot and, indeed, were put on the ballot, and a fifth person you claimed and we did not had received sufficient additional credit to warrant his being put on the ballot, and that being the person whom you mentioned in your direct testimony.

A. The candidate for the Financial Secretary position.

Q. And we had a dispute as to whether he was entitled to credits since he worked until 1:00 o'clock?

A. That is right.

Q. No dispute about when the meeting started?

A. That is right.

Q. Of the nine persons whose eligibility you checked and who had not attended 11 meetings, either four or five, depending on how we resolved this dispute, had attained sufficient credit to get on the ballot by reason of work conflicts being added to their meeting attendance, do you recall that?

A. I can't remember the exact number.

Q. Apart from those who had, in fact, been nominated, the Labor Department made no effort to check how many other people would have been eligible, isn't that correct?

[145] A. That is true. There is a reason for it, too. The records for their overtime work weren't available to us, either.

Q. You do have the subpoena power under the Statute, do you not?

A. Yes.

Q. Are you saying the Company did not have the records or that they did not voluntarily show them to you?

A. It was my understanding the Company did not have the records.

THE COURT: I don't see how the Company could have a payroll without having the record as to who was working and when.

You say they did not have them, is that right?

THE WITNESS: This is my understanding, your Honor: The Statute requires the Union to maintain its records for one year after an election. But I don't know of any requirement of an employer who has a requirement—how long he has to retain payroll records and that sort of thing.

THE COURT: I see.

THE WITNESS: And this covered a two and a half year period.

[146] THE COURT: I see.

BY MR. GOTTESMAN:

Q. Now, Mr. Queen, if there were nine people whose records your investigator wanted to check, and as to each of those nine he came back and reported from the Company records, did he not?

A. As I said, I don't remember the exact number, but there were some, yes.

Q. Did he report to you that there were any individuals whose records he sought to check, as to which he could not get the results?

A. No, but I again am relying on my memory, and quite a few cases have gone before and since this time. I do not believe the employer had the records available for the entire period for all the members involved.

Q. How did he check those that he checked?

A. Well, they happened to fall into the period for which he kept their records.

Q. Mr. Queen, I show you a document which has been marked for identification as Defendant's Exhibit T, and ask you if this is a copy of excerpts from a document entitled "U.S. Department of Labor; *LMRDA Interpretive Manual*"?

A. It is.

Q. Will you tell us when this document was [147] prepared? I mean not this particular piece of paper.

I mean the Manual from which this is an excerpt.

A. The Interpretive Manual is kept current by another segment of the organization and it has been revised from time to time. I cannot tell you when this particular page was written.

Q. Can you tell us what the purpose of the Interpretive Manual is?

A. The Interpretive Manual since about a year ago is available to the public under the Public Disclosure Act and it represents all of the statements issued by the Department on certain matters, including court decisions that are pertinent.

Q. In addition to court decisions, it also states, does it not, matters of policy or judgment of policy by the Secretary of Labor as to the interprertation of the Statute?

A. Yes.

Q. Now, what was its purpose prior to its being made available to the public? I gather it was in existence long before last year.

A. Yes, from the very beginning of the Act there has been a skeletonized form of this Interpretive Manual. It is used for technical assistance in guiding [148] Union members and officers who seek advice and assistance from us.

I think it should be borne in mind each one of our area offices—we have 24 of them and five Regional Offices—are performing a dual function at all times. They are giving advice and guidance to Union members and Union officers who want to hold an election, as to what is adequate safeguards and what is a reasonable rule and when is it uniformly applied, as it relates to election matters.

There are also sections of the Manual that deal with other titles of the Act, what reports have to be filed, by

whom they have to be signed, when they have to be submitted.

Q. Now, the specific excerpt which we have identified as Exhibit T deals with the question of eligibility requirements to run for Union office, is that not correct?

A. Well, as it relates to attendance and previous experience requirements.

Q. Right.

A. Yes.

Q. I call your attention specifically to Paragraph 422.206, entitled "12 OF 24 MEETINGS MAY BE REASONABLE" and ask you whether that paragraph and the two [149] paragraphs within it are still currently a part of the LMRDA Interpretive Manual?

A. I don't know of any provision that has taken this out, but this has a caveat in it. It provides:

> "It might well be unreasonable, however, in circumstances in which attendance presented an unusual degree of difficulty for a significant proportion of the membership; for example, where the Local had an extensive geographical jurisdiction."

Q. As to that caveat, I wanted to ask you, is it not a fact that perhaps uniquely as to the Steelworkers Union its membership does not have geographic problems since each client has a separate Local Union?

MRS. JANAVS: I will object to that. That is mentioned as only one example where such might be unreasonable. There might be other factors, by the very language of the Statute, that might also make the requirement unreasonable. This question is immaterial and irrelevant.

THE COURT: Well, I'll let him answer it if he can.

MR. GOTTESMAN: Let me rephrase it.

THE COURT: Which paragraph are you [150] referring to?

THE WITNESS: This one right here, your Honor (indicating).

MR. GOTTESMAN: Let me rephrase it so it isn't quite so argumentative.

Q. The second paragraph of Section 422.206 refers to unreasonableness where attendance presents an unusual

degree of difficulty for a significant proportion of the membership, such as an extensive geographical jurisdiction.

Was it your judgment, as the result of your investigation of this case, that this case presented that kind of unusual degree of difficulty in attendance at meetings?

THE COURT: You mean the geographical problem?

MR. GOTTESMAN: Well, geographic or otherwise.

Q. Did you find, in other words, the kind of exception this paragraph applies to generally, namely, circumstances in which attendance presented an unusual degree of difficulty for a significant proportion of the members?

A. I don't think that entered into any of our preliminary considerations of the case or even in the dis- [151] cussions we had with the Steelworkers back in Washington.

I think the point that was made was simply that where there is a large segment of the membership finding themselves unable to meet the meeting attendance requirement, then that is an indication that in this particular case, based on impact, the rule is unreasonable.

THE COURT: Now, that is where I have the difficulty in following you. When you say that the point was made that where a large segment are unable—are unable to meet the requirement.

THE WITNESS: Yes.

THE COURT: Whom did you find was unable? Aren't you concluding that because only 20 per cent or 36 actually in attendance, are you concluding from that the rest of them were unable to meet it, and if so I don't follow it.

THE WITNESS: No, I don't think we came to that conclusion, your Honor.

Maybe a better way of stating it, a large segment did not meet the attendance requirement.

I don't doubt that some of these people didn't meet the meeting attendance requirement in some of these cases because of lack of interest maybe.

THE COURT: I would think so. Did you find anybody that said they were unable to meet the [152] requirements?

THE WITNESS: No, sir, but we found people who said they didn't know what the requirements were.

THE COURT: But that doesn't make them unable to meet them.

Maybe they didn't make any inquiry. Is the Union bound to be sure that every member knows what the requirements are? They only have to take reasonable precautions, don't they? They have to make a reasonable effort to show that everyone—I mean to make it possible for them to learn. Some of them are not interested at all.

THE WITNESS: I think that is true.

THE COURT: The fact that they say they didn't know what the requirements were, that doesn't mean too much to me. If they said they tried to find out and said what they did, in an effort to find out what they were and they couldn't find out, that is entirely different. But when a man says, "I don't know what the requirements were" that doesn't mean too much, unless further the inquiry is made as to, "What effort did you make to find out about it?" and also to show that the Union didn't make any effort to educate their people as to what the requirements were. There has been some evidence on that so far.

[153] But when you say there was a large segment unable to meet them, why, there is nothing here, unless you are going to offer something, and from what you say there isn't going to be anything further on that point. It isn't a question of their being unable. There is no evidence, is there, that any of them were unable to meet it?

THE WITNESS: I have none.

THE COURT: All right.

BY MR. GOTTESMAN:

Q. In addition you have no evidence that attending presented an unusual degree of difficulty, except for those who were working?

A. That's true.

THE COURT: I mean I can understand your conclusion, but I don't know whether it is based on sound prem-

ise, when you say that anybody was unable or had difficulty in doing it, just because a goodly number didn't qualify.

All right. Go ahead.

BY MR. GOTTESMAN:

Q. Now, referring you to another paragraph in Exhibit T, Paragraph 422.250, "PARTICIPATION IN UNION AFFAIRS", is this paragraph still a part of the Manual or has it been withdrawn?

[154] A. I have no knowledge that it is not still a part of it. I think it is.

Q. The first sentence of that paragraph provides, does it not, that under ordinary circumstances the Department will not consider unreasonable "Qualifications reasonably designed to assure that candidates have participated in the affairs of the Union and are sufficiently familiar with the industry in which the Union operates"?

Is there any claim in this case or has the Department ever advanced in the meetings we have had with them a claim that the meeting attendance requirement does not suit that criterion in general, namely, that it is a "Qualification reasonably designed to assure the candidates have participated in the affairs of the Union"?

A. In general? No.

Q. Indeed, does the Department acknowledge, and has it not done so in many cases and in many letters to people who so ask, that the meeting attendance requirements do fall into the category referred to here?

A. That is generally true, Mr. Gottesman. A qualification like meeting attendance serves a useful purpose when it can and is being met, but as we pointed out to the Steelworkers representatives in the meetings you attended there, the purpose—the stated purpose—[155] the purpose stated by Mr. Kleinman, in having the meeting attendance requirement in the Steelworkers Constitution, in the first place, is defeated in some cases where you have members permanently assigned to a shift that keeps them from coming to any meetings at all.

In other cases, where you rotate so that the same members are on a work shift at the same time the meetings

were held, because those members never attend any meetings.

Now, who is more qualified in a case like that, a man that comes to five meetings and doesn't come to any more because of lethargy or the man who comes to none because he is working.

So you can have a self-defeating situation in the way you apply your qualifications.

Q. Mr. Kleinman, in addition to mentioning the desire to have people who are experienced and understood matters, named some other reasons for the Union's adoption of this rule, did he not?

Specifically did he refer to the Union's desire to encourage attendance of members at its meetings?

A. To encourage interest in Union affairs. Yes, he mentioned that.

Q. Did he also not mention the Union's desire that those that seek office in the Union have demonstrated, [156] not only knowledge of its affairs, but an interest in its affairs, as well as prior attendance at meetings?

A. Yes, he did.

Q. Now, Mr. Queen, I show you Defendant's Exhibit Q, which has been marked for identification, and I ask you if you can identify the sender and the recipient of that exhibit, please?

THE COURT: Is there any question about it?

MR. GOTTESMAN: No.

THE COURT: There is no issue about it, is there?

MRS. JANAVS: The only objection I have is on the relevancy because again the law provides that a specific Union election has to be challenged—

THE COURT: But there is no issue about who the sender was?

MRS. JANAVS: No.

MR. GOTTESMAN: No, I just want him to explain who he is and what his function is.

THE COURT: He has already mentioned him as being at the meeting.

THE WITNESS: The addressee is United States Senator Jacob K. Javits of New York and the sender is Frank M. Kleiler, Director of the Office of Labor- [157] Management Welfare Pension Reports.

BY MR. GOTTESMAN:

Q. Is Mr. Kleiler the principal administrative officer in charge of administering the Landrum-Griffin Act—

A. Yes.

Q. —under the Cabinet Officer and his deputies?

A. Yes, he is. I beg your pardon. We should make a distinction there, Mr. Gottesman.

Mr. Kleiler is the head of one office under the Assistant Secretary, who is the Administrator. He is the one to whom the Secretary has delegated authority to file suits in the Secretary's name, and that sort of thing.

But within the office of Labor-Management Reports Mr. Kleiler is the Director. I think we ought to make that distinction.

Q. Now, this letter refers to another lawsuit pending at the time it was sent, which I assume is captioned Wirtz v. Lodge 1085 of the Brotherhood of Railway Carmen of America, is that correct?

A. Yes, that is what it states.

MR. GOTTESMAN: Incidentally, I might state for the record that by stipulation of the parties the date [158] that appears on this typing of the letter is December 5, 1967. That was an error in typing by the Department. It should be December 5, '66, and that is the date that appears on the letter originally sent.

Q. This letter recites, does it not, that the Department is going to withdraw that lawsuit?

MRS. JANAVS: Your Honor, I will object to this line of questioning, first of all, because the document speaks for itself.

If counsel seeks to introduce it, I will object, that it is not material and relevant. It deals with a completely different Union and we don't know what the circumstances in that case were at all.

And also, as I started to say before, the Act allows the Secretary to challenge a particular election only. And we have to consider what the circumstances were in that particular Union at the particular time of that election. Therefore, these other letters dealing with different cases and, in fact, different Unions even, certainly, are not material and relevant to this case.

THE COURT: How is it material, Mr. Gottesman?

MR. GOTTESMAN: In the next to the last paragraph of the letter on page 2, the letter refers to "a general review of attendance requirement as a quali- [159] fication for office holding was held by the Secretary of Labor."

It then recites that it had now been determined that the fact that only a small percentage attended the meetings was no longer to be considered a significant factor in deciding whether the rule was reasonable, giving as the reason precisely the one your Honor gave a moment ago, since everyone can't attend, the fact that some do not choose to do so should not be held against the Union.

THE COURT: You are referring to this in order that—in support of a general statement made by the Labor Department, is that what you are saying?

MR. GOTTESMAN: I would like to establish the fact that the Secretary of Labor made a determination—made "a general review of attendance requirements" and restated the determination that a small percentage of attendance was not a relevant and significant factor.

That determination was made by him approximately a few months prior to the filing of this lawsuit—approximately a year prior to the filing of this lawsuit.

I would then like to argue from that the Secretary of Labor is really an administrative agency under this Statute. He has to make probable cause findings, and that we are entitled to establish by evidence [160] what his prior findings and decisions have been, and to argue that they are entitled to some—relevance is not the right word, but that they carry some weight in interpreting how the Statute should be administered by a Court. They are obviously not binding on the Court.

THE COURT: Well, if the facts and circumstances were not the same—you just want to show that he made this observation—

MR. GOTTESMAN: The statement here—

THE COURT: —in a previous case?

MR. GOTTESMAN: No, no. The statement here does not relate to a specific case. It says he has made a general—

THE COURT: Oh, I see.

MR. GOTTESMAN: I don't care about that specific case. I care about his general review and new determination, which is stated as a general rule.

THE COURT: What are you referring to, this quoted portion down here (indicating)?

MR. GOTTESMAN: No, it is the entire next to the last paragraph, which commences "Subsequent to the institution of this action, . . ."

THE COURT: I see. All right.

MR. GOTTESMAN: It is that entire paragraph.

[161] MRS. JANAVS: I think the last paragraph is quite relevant in this connection, if the previous paragraph is.

THE COURT: Are you offering the whole letter?

MR. GOTTESMAN: I haven't offered the letter yet. I just want to find out whether the determination was made and who made it, after which I will offer the letter as evidence of the—

THE COURT: All right. Objection is overruled for the time being.

MRS. JANAVS: I don't think we have a foundation that this witness is in a position to answer.

THE COURT: Well, maybe he isn't. He can say if he doesn't know.

BY MR. GOTTESMAN:

Q. Mr. Queen, are you familiar with a meeting being held or a review being held, as described in this letter?

A. No, I am not.

Q. Totally unaware of that?

A. Yes.

Q. Were you ever advised by any of your superiors that henceforth percentages were not to be considered relevant to determining whether a rule was [162] reasonable?

MRS. JANAVS: I will object to that question because that misstates what it states here.

It simply says that the meeting attendance solely will not be considered. In other words, there will be other factors and this will be considered in connection with the other factors.

MR. GOTTESMAN: I'm sorry. Let me rephrase the question.

Q. Were you ever advised, in substance, what appears in next to the last paragraph of this letter?

A. I think that we should bear in mind that this letter was written in 1966 and that in 1968, when we had our first meeting with you and the other officials of the Steelworkers in connection with this and the other cases Assistant Secretary Donohue made the statement that the policy of the Department then was that we would not consider a meeting attendance requirement unreasonable per se, but we would consider it unreasonable on impact, where in a particular case a large segment of the membership did not meet the meeting attendance requirement.

Q. Isn't that precisely what this paragraph says, if it accurately reports the Secretary's decision or determination upon review?

Isn't that precisely what he said was [163] not to be relied upon solely in determining reasonableness, namely, the small percentage that qualified?

A. This was in 1966.

Q. December of 1966.

THE COURT: You say the policy changed?

THE WITNESS: That policy, your Honor, was changed.

THE COURT: All right.

BY MR. GOTTESMAN:

Q. Can you tell us—in other words, prior to this time the policy was to regard the small percentage a factor which would make a rule unreasonable?

A. This came up when we were trying in the Department, and it was the Secretary's level that was trying to make the decision, whether we could say a requirement was unreasonable per se. This is in 1966.

Q. Unreasonable per se because only a small percentage met the meeting attendance requirement rule?

A. That is right.

Q. And it was concluded that you would not say that?

A. That is right.

Q. The mere fact that only a small percentage qualified would not make the rule unreasonable?

THE COURT: That is what he says.

[164] MR. GOTTESMAN: I thought he said he had not been aware of it.

THE COURT: No. He said that was the policy established in 1966.

BY MR. GOTTESMAN:

Q. Now, are you familiar with the percentage of the members who had met the meeting attendance rule in the lawsuit which was withdrawn, pursuant to this letter?

A. No, I am not.

Q. Had you conducted the investigation of that case or headed up the investigation?

A. I supervised—had the same position then as I have now, but I am not familiar with that case.

Q. Do you recall whether the percentage was less than ten per cent?

A. No, I don't.

Q. Now, has this policy that you just stated was changed to in 1966 itself subsequently been changed?

A. It was changed in 1968, as Mr. Donohue announced at the meeting held with the Steelworkers.

Q. It was changed after the conduct of the elections that are—this election, is that correct?

A. It was announced at that time. It was under study during that period, during the fall of 1967.

[165] Q. You say it was under study?

A. Under study.

Q. Do you recall approximately when the Railway Carmen case was withdrawn?

A. No, I do not.

Q. The letter of December '66 said it was to be done as soon as appropriate papers could be prepared.

Does that refresh your recollection as to when it actually was?

A. No, I couldn't tell you.

Q. Is it a fair statement at the time these elections were conducted, the last announced statement of the Secretary of Labor was that small percentage did not invalidate a rule?

MRS. JANAVS: Which election?

MR. GOTTESMAN: The election under review in this case, 1967.

THE WITNESS: I don't know.

THE COURT: As I understand it, you said in 1968 the policy was changed to the effect that if you found a very few qualified to run, why, you conclude that there was reason to believe that the atendance rule was unreasonable.

THE WITNESS: Unreasonable, yes.

THE COURT: All right.

[166] THE WITNESS: On impact.

THE COURT: When you say "on impact" what do you mean?

THE WITNESS: Well, we mean that—I'm trying to recall the language that the Assistant Secretary used in explaining it to the Steelworkers.

We will not say a meeting attendance requirement for a one, two or three-year period was unreasonable per se, but where, in a particular case, a large segment of the members were unable to meet the—

THE COURT: Now you are getting into trouble again, when you say "unable to meet".

THE WITNESS: I should say did not meet.

THE COURT: When a large segment did not meet the qualifications of meeting attendance, then what?

THE WITNESS: Then it is unreasonable.

THE COURT: Then the rule of attendance is unreasonable?

THE WITNESS: Yes.

THE COURT: That is exactly what I said. Then you added "on impact" and I wanted to know what you mean by "on impact".

THE WITNESS: I beg your pardon.

THE COURT: All right. Go ahead.

[167] BY MR. GOTTESMAN:

Q. Mr. Queen, in your judgment and based upon your experience are meeting attendance requirements an unusual qualification to be found in Union Constitutions?

A. Unusual?

Q Yes.

MRS. JANAVS: I will object to that unless we have foundation that this particular witness has done a study on that. We do have an expert who has worked specifically on this kind of thing, and this will be produced in evidence.

THE COURT: Well, do you know whether that is a normal requirement for candidacy, meeting attendance in Unions generally, from experience?

THE WITNESS: The larger number don't require a meeting attendance requirement.

THE COURT: But some do?

THE WITNESS: Yes, some do

THE COURT: All right. Go ahead, Mr. Gottesman.

MR. GOTTESMAN: Let me move the admission of Exhibit Q solely for the purpose of the description the determination—the Secretary of Labor's review and determination made at that time, and not for the purpose of getting into the issues described in the specific [168] lawsuit referred to there.

THE COURT: Any objection?

MRS. JANAVS: Yes, your Honor. I do object. I am not sure the two can actually be divorced one from the other.

I think it is indicated in that last paragraph—the writer of the letter indicated that he still had to consider the particular circumstances of a particular case.

THE COURT: The objection is overruled. Q is ordered in evidence.

* * * *

[169] MR. GOTTESMAN: I will offer in evidence Defendant's Exhibit O.

* * * *

THE COURT: What is the date of O?

MR. GOTTESMAN: October 12. '67.

* * * *

[174] Q. Mr. Queen, just a few more questions. Your letter to Mr. Abel which you referred to, Plaintiff's Exhibit 9, I believe, do you have that there with you?

This letter purported to state to the Union—I don't know if you call it preliminary findings, but your findings as

of that date with respect to possible violations of the Act, is that not correct?

A. Correct.

Q. I refer you to Paragraph 4.

THE COURT: What exhibit is this?

MR. GOTTESMAN: Plaintiff's Exhibit 9, your Honor.

Q. That recites the application of the meeting attendance requirement to Local 6799 "resulted in approximately 93.7% of the active membership being ruled ineligible", do you see that there?

A. Yes.

Q. In light of what we have discussed today, that is not necessarily an accurate figure, is it, in that you have not checked the eligibility of most of the [175] members of the Union with respect to credit for work?

A. I think it is an accurate statement even now. They were ruled ineligible at the time of the election.

Q. Who ruled? Did the Union rule the vast majority of its members ineligible or did it not have occasion to rule one way or the other, since they were not candidates?

A. I think if you are using the candidate test, they didn't have the opportunity to rule on them as candidates, but only 6.3 per cent of the members could meet the meeting attendance requirement.

THE COURT: On what is that based? We discussed this before. On what is that based ?

THE WITNESS: Based on the number of meetings that the Union had credited them with attending and the work credits they were entitled to receive.

THE COURT: Now we are back where we were before and with some problems, I think.

You are saying now there were 6.3 of the membership eligible, including those who were eligible by reason of credits for work absences, that is what you are saying?

THE WITNESS: Yes.

THE COURT: Now, just a few moments ago [176] we got into a controversy and the testimony was there were only 36 who were eligible by reason of actual attendance, and that the rest of them were not checked, only reason of proper excuses, and the reason they were not checked, to determine whether they would be eligible by

reason of proper excuses, and the reaso nthey were not checked, I understood, was that the records were not available.

Now, what is correct? I would like to know about this.

THE WITNESS: I think it is correct to say that the Union could not show more than 6.3 of its membership at that time could meet the meeting attendance requirement.

BY MR. GOTTESMAN:

Q. Mr. Queen, when you said the Union could not show, when you wrote this letter you had not asked the Union to show anything, had you?

A. When I wrote the letter, Mr. Gottesman, I indicated in the second paragraph; "The investigation thus far conducted establishes probable cause to believe" that thus and so took place in the election.

Then I asked for the Union's comment by December 1st and I got no reply to this letter at any time.

[177] We has several conferences but no reply to the letter.

Q. The conferences were a reply, were they not? The Union stated its position, did it not?

A. Well, to some of these matters they stated a reply.

Q. Did not the Union tell you that—I should say, wasn't there a comparable paragraph to this in the letter that you wrote with respect to each of the Local Unions involved, namely, one which recited a percentage figure based on those whose records were checked?

A. The other Steelworkers Locals?

Q. Yes.

A. Yes, there was a similar—

Q. Right. And didn't the Union tell you at our general meeting that that figure overlooked the vast majority of the members who had or might have worked because you had not checked their overtime records?

Didn't the Union tell you that at our general conference?

A. Yes, and I think we told the Union it was incumbent upon the Union and not on the employer to devise some kind of a method to have an overtime record so that they could determine eligibility.

Q. Now you have isolated. One of our issues [178] of difference was whether or not the Union was required to keep overtime records, in addition to the employer keeping them, is that right?

A. Well, yes, but don't you also recall that we made the point in the conference that the Act requires the Union to retain records of an election for a year, but there is nothing that requires the employer to keep these overtime records for any period of time he doesn't want to keep them, so far as I know.

Q. In any event, this paragraph is directed not to who should keep the records, but how many people, if not qualified, could qualify if they sought to run?

A. That is right.

Q. And announced to us your preliminary determination that only 6.3 per cent could qualify or could have qualified if they had so desired, is that right?

A. Yes.

THE COURT: Now, this 6.3 per cent is the 36 employees referred to before as all having had actual attendance records to qualify, isn't that right, Mr. Queen?

MR. GOTTESMAN: I think it is those plus five more the Labor Department had found. That was nine that they checked.

[179] THE COURT: If you take 6 per cent of the 600—they didn't have 600 members.

MR. GOTTESMAN: Right.

THE COURT: You take 6 per cent of 600, why, you have 36 and if you are talking about 570 at 6.3, as I see it you are going to arrive at 36, and these 36 are the ones who had actual attendance sufficient to qualify.

I haven't heard anything yet about these checks about others, except to some nine you referred to, Mr. Gottesman, whose records were checked, either by the Union or by the Labor Department.

The evidence at the present stage appears to me that they found that a certain number were eligible by actual attendance and there were no checks made on the others, but because there was no showing of eligibility of more than this 36, why, the Labor Department concludes that is an unreasonable rule, isn't that it?

And your position is that the burden was on the Union

to show, if there were more eligible by reason of excuses, that it was their burden to tell you about it?

THE WITNESS: Yes, your Honor.

THE COURT: And as long as there were only 36 that they told you were eligible, why, therefore [180] you had a right—your position is you had a right to conclude that rule was unreasonable,—

THE WITNESS: Yes, your Honor.

THE COURT: —although it is possible every one of them didn't want to attend.

THE WITNESS: True.

• • • •

Q. Mr. Queen, at any time prior to the institution of this lawsuit, did the Secretary or any representative of the Labor Department advise the Union that the Secretary believed the Union had placed on the ballot a candidate who did not belong on the ballot?

A. Prior to the—

Q. Prior to the filing of the lawsuit.

A. Not that I am aware of.

• • • •

[188] JOHN M. GADD,

a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

• • • •

BY MRS. JANAVS:

Q. Mr. Gadd, where are you employed?

A. Howmet Corporation in Pomona.

Q. What is your position with that corporation?

A. Assistant Controller.

• • • •

[190] THE WITNESS: Then there is overtime records that are posted out in the shop by each department, under agreement with the Union.

THE COURT: Who has control of those records? Does the Union have those?

THHE WITNESS: Yes, they are available to the Union. We keep them to make sure that there is no discrimination as far as overtime is concerned.

• • • •

[193] Q. What is the purpose for these records, now?
A. This is a departmental posting so that any employee can check his overtime or any other employee's overtime in that department, to determine if he has had an equal share of overtime assignment.

* * * *

[204] THE COURT: Were the swing shifts working overtime the greater period of the year, would you say?
THE WITNESS: Which year, sir?
THE COURT: Or could you tell me?
THE WITNESS: Yes.
THE COURT: They would be working overtime more times than not?
THE WITNESS: Up until the beginning of [205] this year our plant—both shifts have worked overtime, as a general rule.

* * * *

TRIBUNE C. LIO,

a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

* * * *

[222] Q. Now, are you absolutely certain about the rule the Election Committee agreed upon as to how you were going to check—how you were going to handle a person who worked until 1:00 o'clock when the meeting started at 1:00?
You stated it was your recollection you were going to give him credit if he worked until 1:00 and the meeting started at 1:00.
A. Yes.
Q. Are you certain of that?
A. Yes, I'm real certain. I mean, it was as simple as that.
THE COURT: You mean if he worked until 1:00 o'clock and the meeting started at 1:00, why, then you say he was working at the time because he had 15 minutes to get to the meeting?
THE WITNESS: Yes.
THE COURT: Is that your theory?

THE WITNESS: Yes. This was agreed on by all the tellers. In other words, we had this one [223] simple rule.

* * * *

[233] OTTO K. FEENSTRA,

a witness called on behalf of the plaintiff, having been previously duly sworn, was examined and testified as follows:

* * * *

Q. Mr. Feenstra, were you a member of Local 6799 Steelworkers Union during the period August 1965 to July 1967?

A. Yes, I was.

Q. With respect to June 1967 elections of officers, were you a member of the Election Committee in those elections?

A. I was the Chairman of the Election Committee, yes, ma'am.

* * * *

[247] Is it not correct that there were four candidates for office that the Election Committee ultimately found not to be eligible, and they were Redman, [248] Glenn Ross, George Pruneri and Elmer Husmann?

A. That is right.

Q. Now, as I understand, each of these persons received from you a letter,—

A. That is right.

Q. —stating he was ineligible, indicating he had ten days to advise you if he disagreed, is that it?

A. That is right. We went by the Manual on that.

Q. Now, did any one of these four persons contact you during that ten day period and disagree with your determination?

A. None at all.

Q. I gather the ballots were then printed on the basis of those you had found eligible?

A. Right.

Q. Now, I also understand, forgetting these four people for the moment you found not eligible, there were others, who after checking the overtime records, you found to be eligible, is that right?

A. That is right.
Q. And who had not been eligible strictly on the basis of the attendance records?
A. That is right.

• • • •

[253] MARVIN D. WRIGHT,

a witness called on behalf on the plaintiff, having been previously duly sworn, was examined and testified as follows:

• • • •

[264] Q. Were you present at the nominating meeting?
A. Yes.
Q. Can you tell us how it worked, did the Chair call for nominations?
A. This is to the best of my knowledge. The Chair called for nominations and somebody nominated you and [265] then I think right then they give you a chance, you know, to decline if you want to.
Q. When they called for nominations they didn't limit who could be nominated of those that were eligible?
A. No. Everybody was eligible, as far as they were concerned.
Q. Anybody could be nominated, have his name placed in nomination?
A. Right.
Q. And then you say some people on the spot, after their name was placed in nomination, declined?
A. Yes.

• • • •

[268] Q. Now, if you had not declined—suppose you had not said at the meeting, "I decline," what would have happened then?
A. I would have been checked out, like the ones that didn't decline that was checked out.
Q. If upon being checked out it was found you had enough credits you would have appeared on the ballot?
A. That is true.
Q. And if it were checked out and it was found you

did not have enough credits you would have not [269] appeared on the ballot?

A. That is true.

* * * *

[271] MELVIN W. SCRUGGS,

a witness called on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

* * * *

[277] THE COURT: Did you always sign the register when you went in? I thought you said you did.

THE WITNESS: I don't think I ever missed signing.

THE COURT: You signed it. Had there been instructions that members should sign the register?

THE WITNESS: At the first—when the Union first started I don't recall, but I do recall that later on that more than one time that the President of the Union said from the Chair, "It is imperative that you sign the [278] register because it will be used as a requisite for running for office."

* * * *

[279] Q. You do recall definitely, though, that at this time, whenever it was, that the President made the announcement, that he specified that the attendance register would be used for purposes of determining attendance for candidates?

A. Yes.

* * * *

[281] Q. Do you recall roughly how long meetings generally would last? Give us as good an estimate as you can.

A. I'd say probably about two hours.

* * * *

[303] HERBERT J. LAHNE,

a witness called on behalf of the plaintiff, having been previously duly sworn, was examined and testified as follows:

THE CLERK: Please be seated.

Will you state your name, please?

THE WITNESS: Herbert J. Lahne, L-a-h-n-e.
THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. DONOGHUE:

Q. By whom are you employed?
A. U.S. Department of Labor.
Q. What is your present position?
A. I am Director of Division of Research, Labor-Management Services Administration.
Q. How long have you held this position?
A. Under different organizational setups since 1959.
Q. What type of work does this Division perform?
A. We do research in the field of Union structure, administration, welfare, pension plans and anything [304] that is requested by the Assistant Secretary under whose supervision we happen to be.
Q. This includes work in connection with the Labor-Management Reporting Disclosure Act?
A. It does.

MR. DONOGHUE: Your Honor, we have attached to the list of plaintiff's witnesses a summary of Mr. Lahne's experience and educational background.

At this time to avoid any delay, we would like to offer that as an exhibit.

MRS. JANAVS: 19.
MR. DONOGHUE: 19.
MR. GOTTESMAN: No objection.
THE COURT: 19 is ordered in evidence.

(Document marked Plaintiff's Exhibit 19 was received in evidence.)

MR. DONOGHUE: At this time, your Honor, I would like to move that Mr. Lahne be qualified as an expert in labor relations.

THE COURT: Any objection.

MR. GOTTESMAN: Your Honor, I'm not sure what an expert in labor relations is.

We will certainly stipulate Mr. Lahne is an expert in

those areas in which his qualifications, as described in Plaintiff's Exhibit 19, relate.

[305] THE COURT: Very well. All right. You may proceed.

MR. DONOGHUE: I would like at this time to have marked as Plaintiff's Exhibit 15 a chart showing a study of 72 National Constitutions.

THE COURT: Very well. 15 for identification.

(Document was marked Plaintiff's Exhibit 15 for identification.)

MR. DONOGHUE: May that be handed to Mr. Lahne, please?

(Exhibit placed before the witness.)

BY MR. DONOGHUE:

Q. Mr. Lahne, referring to Plaintiff's Exhibit for identification 15, could you identify this document and tell us what it is?

A. Yes, sir. This document was prepared under my direct supervision in my office, and as the title indicates it shows for 72 National Unions the provisions in those Union Constitutions relating to attendance requirements as a qualification for nomination or election to Local office. The date is shown as of June 1967.

Q. That is the date of the election in question?

A. That is what I understand.

[306] MR. DONOGHUE: I would move now, your Honor, that Plaintiff's Exhibit 15 be admitted.

MR. GOTTESMAN: No objection.

THE COURT: 15 is ordered in evidence.

(Document marked Plaintiff's Exhibit 15 was received in evidence.)

BY MR. DONOGHUE:

Q. Now, Mr. Lahne, would you explain in your own words exactly what the chart shows?

A. Yes. This chart in its first column at the left gives the name of the Union in a short form.

The second column gives the date of the provisions analyzed, which are in effect as of June 1967.

The third column shows the number of members in each of the Unions so named.

The last two columns show the attendance requirements in each of these Unions, if there are any such requirements.

There are two columns, the two last columns show the number or percentage of meetings which is specified in the Constitution to be required, and the last column shows the number of months over which that attendance must be achieved.

Looking at the—do you want me to point out the various highlights of the table at the present [307] time in terms of what it shows?

Of the 72 National Unions here, which comprise 90 per cent of the Union membership in the country, of these 72 56 of these Unions, with 68 per cent of the membership, have no provisions requiring attendance at meetings to be eligible to run for office.

Four of the Unions, with 7 per cent of the Union membership, give the Local Union an option as to whether or not they have a meeting attendance requirement.

And just 12 of the Unions, with 25 per cent of the membership, have a mandatory provision requiring candidates for Local offices—

THE COURT: You said 25 per cent?

THE WITNESS: 25 per cent of the membership, yes, sir. 12 Unions, with 25 per cent of the total membership, have provisions which require—

THE COURT: Mandatory?

THE WITNESS: —attendance at meetings. Now, these requirements vary somewhat, but I will just refer to the period of time required to fulfill the requirement.

Of the 12 Unions, four of them allow the requirement to be fulfilled in six months. Two of them have the requirement subject to fulfillment in one year. [308] Three of them provide a two-year period over which the requirement must be fulfilled. And two of them specify that there is a three-year period.

THE COURT: Is this one of them, the Local here?

THE WITNESS: The Steelworkers is one of the three-year Unions.

THE COURT: One of the two—

THE WITNESS: I'm on three years now. Four of them are six months.

THE COURT: Yes, I understand that. Two with a year, three with two years and two are three years.

THE WITNESS: Two are three years.

THE COURT: Now, I asked you—

THE WITNESS: The Steelworkers is one of those two for three years.

THE COURT: All right. What about the other ones?

THE WITNESS: There is one left, and that is the Boilermakers. They don't specify the period. They simply say that the member must attend such meetings as the Local By-Laws require. That accounts for the 12 Unions which are on this table as having mandatory requirements.

[309] MR. DONOGHUE: We have no further questions at this time, your Honor.

THE COURT: Very well.

CROSS EXAMINATION

BY MR. GOTTESMAN:

Q. Mr. Lahne, do I correctly understand that this table shows only those provisions that appear in the Constitutions of International Unions?

A. That is correct.

Q. In compiling this table, was that the only source which was looked to?

A. That is correct.

Q. In other words, if the Union has a standard By-Laws, which are to become binding on each of its Local Unions, which is a document separate from its Constitution, that was not looked at—

A. I'm sorry. I would like to correct that.

We looked at all the documents. We considered that those standard By-Laws are part of the National Constitutions.

Also I might say these Constitutions were submitted under the requirements of the Landrum-Griffin Act, with which I am sure you are familiar. In some cases the Con-

stitution itself was submitted for an earlier [310] year and supplemented by the annual reports that these Unions are required to make. So that in some cases it is a combination document, a printed Constitution plus the annual report which the Union is required to make when it changes its Constitution.

In other words, the Union may not choose to reprint the entire Constitution, say, in 1967 when it has only one change over 1965. So we use the 1965 Constitution, plus the documents submitted to the Department of Labor indicating the change in 1967.

Q. Now, Mr. Lahne, you did not in preparing this table look at any provisions which appear in Local Unions' own Constitutions or By-Laws?

A. We did not.

Q. This is a chart that deals with eligibility requirements for Local Union elections, is that not right?

A. That is correct.

Q. Having in mind your position as an expert in this field, you do know that there are at least some Local Unions that provide such requirements in their own By-Laws?

A. Yes, I do.

Q. Did you make any effort to ascertain how many Local Unions having how much membership have their provisions in their own By-Laws?

[311] A. I did not.

Q. Do you have any basis to make an estimate as to how many Local Unions?

A. You mean of the total Local Unions in the country?

Q. Yes.

A. Only my some 30 years looking at Local Union Constitutions in other connections and dealing with Local Unions, speaking to Local Union members and officers.

Q. No systematic effort has been made to determine—

A. No systematic effort has been made to tabulate the total number of Local Union Constitutions, which is in the neighborhood of 45,000—I'm sorry, there are some 45,000 Local Unions, and there has been no systematic tabulation by anyone of the requirements in these Constitutions in this regard.

THE COURT: Then of the 68 per cent of the membership, wherein the International does not provide for any attendance requirement qualifications for running for office, we don't know whether—maybe all of those Local Unions do provide for it and maybe none of them do, we don't know.

THE WITNESS: Yes, your Honor, that is correct, we do not know the exact—an exact figure. It [312] is entirely possible some have them and some do not.

BY MR. GOTTESMAN:

Q. Now, I gather that means then for each International Union which appears on this chart, with a little dash, signifying no provision in its International Constitution, that we are provided no knowledge as to how many, whether it be none, some or all of its Local Unions have on their own adopted a meeting attendance requirement?

A. That is correct.

Q. Am I correct also in understanding that the only eligibility requirement with which this chart deals is meeting attendance?

A. Correct.

Q. Are there other provisions that appear in the Constitutions of some or all of the Unions here, which also qualifies the right of the members to run for office in the Union?

A. Yes, sir.

Q. Would you say at least some such provision appears in the Constitutions of all the 56 Unions which do not have a meeting attendance requirement?

A. I don't understand your question. Some such what?

Q. Are there at least some eligibility require- [313] ments, other than simply being a member of the Union?

A. Yes, there are. There are some requirements which are practically universal in Union Constitutions.

Q. Now, are there some requirements in at least some of these Constitutions which are intended to serve purposes comparable to those you understand the meeting attendance requirement to serve?

THE COURT: Let's find out first what he understands the meeting requirement—

THE WITNESS: I was just about to—

BY MR. GOTTESMAN:

Q. All right. Can you tell us, from your experience in this field, what you understand to be the purpose of the meeting attendance requirement?

A. As I understand, the Union's position as to meeting attendance requirement—I am not referring only to the Steelworkers but to other Unions which have it, and even the Unions that don't have it who have discussed with me the desirability or undesirability of having it—there is the understanding or let us say the hopeful belief that attendance at meetings makes a member acquainted with Union affairs, so that if he desires to run for office he will have some knowledge of Union affairs and Union problems.

[314] THE COURT: Now, then your next question.

BY MR. GOTTESMAN:

Q. The next question is, are there Unions on this list who have provisions other than meeting attendance provisions which are intended to serve that same purpose, namely, to assure we have officers who have some knowledge and familiarity with Union affairs?

A. Well, it is a little hard to answer the question the way you put it.

If I may refer to the universal, practically universal qualifications for holding Union office, some of these might be so construed.

For example, that a member be—a person be a member of a Local for at least one year is virtually a universal requirement.

Now, I suppose the answer there would be that this could be intended to serve the same purpose.

The second virtually universal requirement is the requirement that the member be in good standing. There is one which is not as universal but very common, that the member be employed at the trade. This is especially true in craft Unions.

I think there may be one or two others, but there are about three possibly four qualifications which are universal among the Unions.

[315] As to the meeting attendance, as—I'm speaking of National Constitutions—it is not that common. There are other uncommon ones, for example, prior office holding is an uncommon requirement, a very rare requirement; more rare than even the meeting attendance requirement.

Q. But there are some International Unions that have a prior office holding requirement?

A. I think there are only two.

Q. Are those two on this list?

A. Let me see, now. The Maritime Union was one and, of course, that case was litigated and the Maritime Union has now removed that provision, or at least—

Q. At the time of this election?

A. June '67. I guess that is true at the time of June '67, they did.

The Garment Workers have such a provision but it is rather qualified. It can be avoided by attending a training school in lieu of holding prior office. I think those are the only two offhand. I haven't memorized all the Constitutions of all Unions.

Q. To your knowledge are there any other provisions designed to assure qualifications, other than meeting attendance and these two you just mentioned and [316] those you have mentioned earlier?

A. There are, for example, some Unions have a citizenship requirement. There are—in addition to positive requirements there are negative aspects. For example, criminals, Communists—

THE COURT: He is talking about requirements that—

THE WITNESS: Which qualify a person positively, in the affirmative sense.

THE COURT: No. He is talking about requirements from which you could conclude the Union was insisting that the candidates have an acquaintance with the Union business.

THE WITNESS: I see. Yes, in that sense I think I have mentioned only those—period of membership in the Local is the primary one.

THE COURT: Is there any requirement as to the period of time the man must belong to the Union?

THE WITNESS: I think that was litigated in one case where the time was five years and the Court considered that to be too long for a Local office.

THE COURT: There was nothing indicated as to what the Court felt was a reasonable period of membership?

THE WITNESS: I believe the Court at that [317] time indicated that—I can only go by my memory—I think three years. I think the Court said possibly two or three years might be acceptable, but the Court didn't lay down any rule, but they felt five years was too long.

THE COURT: There has been no litigation of this period—of any period with respect to the attendance of meetings?

THE WITNESS: Oh, yes, there has been litigation on that. I assume our attorneys will cite all the cases.

Actually, the meeting attendance—in the Glass Bottle Blower cases. There are several of those.

BY MR. GOTTESMAN:

Q. Those cases involved a provision, I think, on your chart that the Local required attendance of 75 per cent of the meetings?

A. In three years. Yes, I believe—

THE COURT: And that was held to be too severe?

THE WITNESS: Yes. The period of time,—

THE COURT: Wasn't it 75 per cent that was held to be unreasonable?

THE WITNESS: Sometimes, your Honor, if you will excuse me, it is just a little hard to know just—

[318] THE COURT: Did the Court say the three-year period was excessive?

THE WITNESS: It was 75 percent two years and the Court simply said it was unreasonable. I don't remember any other details from the decision.

THE COURT: All right.

THE WITNESS: It may be that—

THE COURT: There is an exhibit already in here—I don't have the number of it—which refers to that case and says 75 per cent.

MR. GOTTESMAN: Defendant's Exhibit T, I believe, your Honor.

THE COURT:

> "The Court concluded that the requirement of 75% attendance at Union meetings was too high when combined with a strict rule regarding excused absences which permitted a member to be excused only when he was required to work on the job while the meeting was being held. The Court also stated that a rule which, as in this case, limits the eligible group to 2.2% of the membership seems to be too harsh."

That certainly makes good sense, so far as I am concerned.

* * * *

[319] Q. —to your knowledge has any Court ever held a 50 per cent meeting attendance rule invalid?

[320] A. I don't recall any. But I will have to say again here—

* * * *

[323] Q. Just one last question. As I look at this and look at the rankings of the Unions in the order of their members, am I correct in noting that the largest, the third largest and the fifth largest of the Unions on your table have a meeting attendance requirement of one form or another in the International Constitution?

I'm referring to the Teamsters, Steelworkers and I believe it is the Machinists.

A. Well, I haven't examined that. The [324] Teamsters and the Steelworkers, of course, I know to have a requirement. The Machinists have a Local option.

MR. GOTTESMAN: I have no further questions.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. DONOGHUE:

Q. Mr. Lahne, could you tell the Court why you looked at National Constitutions and not Local Union Constitutions?

A. Because it was a National Union Constitution provision which was involved in this case.

Q. Based upon your expert opinion, would you think it would be likely for a Local Union Constitution to contain a meeting attendance requirement as a qualification of their right to be a candidate, absent a mandatory provision in a National Constitution?

A. I would think that only a minority of Local Unions will have such a provision if it is not required by the National Constitution.

Q. In your opinion, would you say attendance at Union meetings is necessary in order for a member to become knowledgeable about the affairs of the Union?

* * * *

[325] THE WITNESS: Yes, my opinion on the meeting attendance rule, I might say, might not necessarily be that of the Secretary of Labor.

My opinion on a meeting attendance rule just happens to coincide with the Secretary's but for different reasons. I believe the meeting attendance rule is not necessary to give the member a knowledge of what transpires in the Union and what the Union's problems are, in order to become a better officer.

BY MR. DONOGHUE:

Q. Could you tell us what other ways are available, based on your knowledge and experience, as to how they gain this knowledge?

A. Union members secure a great deal of [326] knowledge by Union affairs and problems within the Union, issues within the Union, through the talk that goes on in the shop, at the work place and away from the work place, about Union affairs.

Union meetings, as they are presently constituted,

especially in Unions with anywhere from a couple of hundred members up to many thousands, tend not to be town hall type meetings but rather to be delegate type meetings unofficially.

Those whose offices in the Union or activity in the Union, such as shop delegate, committeemen, informal leaders in the shop, those who go to the meetings report back to the shop and are expected to and are questioned by people in the shop about what went on in the Union.

I might say this is a subject on which I wrote an entire article, which is listed in the sheet which the Court has, which received a prize from the American Psychological Association, as the best study of the relationship of psychological factors to industrial matters, and it has been cited hundreds of times and reprinted hundreds of times.

THE COURT: Mr. Lahne, the fact that there might be a better way to acquaint the members with the business of the Union—when I say "better" I mean [327] better than requiring meeting attendance—let's assume, for the purposes of discussion, that there is a better way to do it.

It doesn't necessarily follow their requirement of meeting attendance as a means of accomplishing that purpose is unreasonable.

THE WITNESS: No, there are many—

THE COURT: There are different ways.

THE WITNESS: There are different ways.

THE COURT: And you might think and I might agree with you that one or two ways were better, it still wouldn't make the meeting attendance unreasonable unless the requirement was such as specified in these cases, if the requirement were such that it made it so onerous and made it so difficult for the membership to comply with it that it would be deemed unreasonable.

THE WITNESS: Yes. I would say there are several ways of doing it and the informal way appears to be the most prevalent, since most Unions do not require you have a meeting attendance rule, they find—at least they believe and I know of no evidence that Unions with a meeting attendance rule get any better officers or are any better governed than those without such rules.

So there are these several ways. The vast majority of the Unions have preferred to rely upon [328] these other ways, rather than upon meeting attendance.

THE COURT: Now, there are 68 percent we don't know what the Locals do, aren't there?

THE WITNESS: In terms of an exact survey that is correct.

THE COURT: You feel the minority of them that would have—

THE WITNESS: The small minority would have the meeting attendance rule.

BY MR. DONOGHUE:

Q. Would you tell the Court what you would say are the qualifications universally found in Constitutions?

A. I think we went through this. Good standing, a period of membership in the Local, these are the two which are most frequent.

Q. In your opinion would you say that a member who met the universal qualifications is more qualified or less qualified than a person who has to attend a certain amount of meetings to qualify as a candidate?

A. I wouldn't say he was more or less. I would say, depending upon his interest in finding out about Union affairs, whether he attends a meeting or not, if he meets these universal qualifications he is on a par with everyone else.

[329] Q. Based upon your experience do you find that Unions that have these meeting attendance requirements as qualifications has increased attendance at Union meetings?

A. No, they have not. As a matter of fact, it appears practically nothing, your Honor, which can increase on any permanent basis the low attendance at normal routine Local meetings.

From door prizes—I have been places where the meeting lasted just long enough to say, "There's beers at the back" and the attendance was no better than at the place where they had fines put on attendance, where they had meeting attendance requirements for eligibility, except in crises times of contract negotiations and election of

officers if they are hotly contested. Meeting attendance at Local meetings runs along on the low plane.

MR. DONOGHUE: I have nothing further.

THE COURT: Anything further?

RECROSS EXAMINATION

BY MR. GOTTESMAN:

Q. Mr. Lahne, I don't want to challenge your qualifications. Are you certain provision of beer has no effect on meeting attendance?

[330] A. Well, there weren't many more people there at that meeting and it happened to be a meeting of rough and tough guys, Operating Engineers. This one I happen to remember was in Baltimore. I didn't realize until the middle of the meeting that this Local was under trusteeship. No one mentioned it at the beginning of the meeting.

But I had gone to another meeting in the same city just the day before and there wasn't much difference in attendance.

Q. You stated as your view that you don't think meeting attendance is a particularly good way to assure qualifications or that it is a necessary way?

A. It is not a necessary way. It is not necessary to qualifications. I don't say it is not one of the ways.

Q. That was going to be my next question.

There are reasonable men, are there not, that concede that there is a relationship between meeting attendance and qualifications, who see it differently than you do in that respect, one of whom is Secretary of Labor, at least, in his Interpretive Manual?

A. I am free to disagree with the Secretary.

Q. Pardon me?

A. I am free to disagree with the Secretary.

[331] THE COURT: He is asking you if you do in this regard.

THE WITNESS: Well, as a matter of fact, until you read that exhibit I was unaware the Secretary had taken that position.

BY MR. GOTTESMAN:

Q. Well, based on the position as expressed in that Manuel that was read in court yesterday, are you in disagreement with the position stated there?

A. If you will give me the exact language I will be glade to state my disagreement.

MR. GOTTESMAN: Would the clerk give the witness Exhibit T, and maybe another one or two.

THE COURT: I think it was one of the letters, wasn't it?

MR. GOTTESMAN: One of the letters, I think. Also Exhibit Q.

THE WITNESS: Let's see, I have Exhibit H here.

THE COURT: T and Q.

MR. GOTTESMAN: I believe it is T. It has an "H" and "T" on the bottom.

THE WITNESS: That is correct. Which part are you referring to of this exhibit?

[332] BY MR. GOTTESMAN:

Q. The second paragraph relating to the 50 per cent, the two years meetings. The second marginal numbered paragraph.

A. Yes, I disagree with the Secretary.

Q. Thus far, as I have understood your testimony, you have talked about your views about the necessity for fulfilling one of the functions of the meeting attendance rule, or, at least, one function, namely, having more qualified officers.

Let me suggest to you some other possible justifications for it and tell me whether you think these are equally unreasonable or less unreasonable or not unreasonable at all.

Might not an International Union have as one of the objectives in requiring such a provision the desire to have a system of checks and balances, whereby those who are, in fact, dissatisfied with the performance of the incumbent officers, and who would be inclined to run against them, would be motivated by the meeting attendance rule to actually attend the meetings and therefore have a check

on what the incumbent officers are doing by the mere fact they are there?

A. Now, what does your question relate to?

Q. The question is, is that an unreasonable [333] reason for the Union to have a meeting attendance requirement?

A. It might be a given reason but I don't see it as a valid reason. Very often dissatisfaction is expressed by non-attendance at meetings.

Q. Isn't it true that very often dissatisfaction is also expressed by attendance at meetings?

A. That is true. But, as I say, dissatisfaction, a feeling it is useless to go to a meeting, for example, because you are not allowed to talk. The women especially have been known and in my presence have walked out of meetings where altercations have started, and there is no doubt about their dissatisfaction with the Union, but they will not attend the meeting.

Q. You are not suggesting that in the Locals of the Steelworkers—

A. I am not suggesting as to any particular Local.

Q. I want to be clear. Assuming that, in fact, it is not the history of Steelworkers Local Unions, or this one, that members are not allowed to talk or altercations are common at the meetings, so that those barriers to an opponent desiring to attend are removed?

A. I would say there is a little of this in practically every Union one place or another.

[334] Q. I am not asking for a confirmation that we are pure and wholesome, but I am asking whether with those barriers removed there is, in fact, some reason for an International Union to desire that?

THE COURT: He has already testified that attendance is not an unreasonable requirement to assure acquaintance with business. He has already testified to that, in answer to my question, so there is no reason to go into great detail about this, and conduct a laborious examination on this. I mean he has admitted that.

He thinks there are other ways that are better, but he says that this is a reasonable way.

Isn't that what your testimony has been?

THE WITNESS: Well, I would say, your Honor, it is a reasonable way if it is not too restrictive.

THE COURT: Of course, if it is not too restrictive. That goes along with it. That was included in my question.

THE WITNESS: I might philosophically, even if a hundred per cent of the members qualified under the rule, I would still, as a matter of making elections as unrestrictive as possible, not personally care for the rule.

THE COURT: Why, surely, I can under- [335] stand that. You have indicated that.

MR. GOTTESMAN: I have no further questions.

* * * *

[349] MR. GOTTESMAN: Your Honor, we are ready to start putting our evidence on. We have one problem, though. We don't know what to do and if your Honor can give us some guidance, why, fine. And if not, fine.

We are prepared to put on some evidence as to the extent to which people worked overtime on the swing shift.

We don't think it is our burden to do it, as I have already argued. We think it is the Government's burden. They failed to show how many people worked overtime. We don't have the precise information. We have not subpoenaed the Company's overtime records, but we do have some substantial amount of live testimony which will indicate that there was in volume people working overtime on meeting nights, as well as other nights.

The question is, should we, the defendant, come forward and negate something which the plaintiff hasn't proved. Our judgment is it is not our burden. The plaintiff failed to sustain it, and we could rest on it.

THE COURT: I'd put on what you have and make the best case you can, in spite of your position [350] which I don't say is not sound but I'd put on the best case that you can. That is the way I feel about it.

I would like to have all the information that is available. I do think there is some merit to your position.

* * * *

[351] DONALD F. REDELL

a witness called on behalf of the defendant, being previously duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. FRANKEL:

Q. Mr. Redell, by whom are you employed?
A. Loud Company, Howmet Corporation.
[352] Q. How long have you been employed by Howmet?
A. It will be five years next month.

* * * *

[355] Q. Mr. Redell, you were employed in the plant between August '65 and April 1967, is that correct?
A. That is right.
Q. Now, until I advise you otherwise, the following questions will relate only to that period.
Did you hold any sort of position with the Local Union during that period?
A. During that period I was on the Safety Committee and I was Grievance man.
Q. Which shift were you Grievance man?
A. I was Grievance man on the second shift.
Q. If there was no overtime, what were the hours of the swing shift?
A. The hours of the swing shift would be from 3:30 P.M. until midnight.
Q. In which department did you work?
[356] A. Hydratel.

* * * *

Q. And approximately how many employees are employed by the Hydratel department?
A. Between 20 and 25 at that time. I am speaking on the one shift.
Q. That is the shift you worked on?
A. Yes.
Q. Now, with respect to the Hydratel department, will you tell us approximately—a rough estimate—how often the Hydratel department worked overtime in the period?
A. Just the Hydratel department alone?
Q. Yes.
A. I would say in that period probably 85 per cent of the time they were on an overtime basis.

Q. Now, can you give us—in what sort of units did they work overtime when they did work?

A. It was by hour, usually nine or ten hours.

Q. In other words, sometimes they worked until 1:00 and sometimes until 2:00?

A. That is correct.

Q. Have you any idea which was most frequent, working until 1:00 or working until 2:00?

[357] A. From my recollection I would say it was—during this period of time it was more toward the ten hours than it was the nine.

Q. They worked ten hours, what time would they get off?

A. 2:00 A.M.

* * * *

As Grievance Committeeman, were your duties limited to the Hydratel department?

A. No, sir, they were not.

Q. What were the areas of your responsibilities as Grievance Committeeman?

A. Well, the contract spells it out, that the zone was the south side of the alley.

* * * *

[358] THE COURT: With respect to personnel, how was it divided, approximately?

THE WITNESS: I compiled this myself. Roughly I figured around 122 on the south side of the alley and 80 on the north side of the alley.

THE COURT: All right. This is just the swing shift, as I understand it.

MR. FRANKEL: That is correct.

THE WITNESS: Yes.

[359] BY MR. FRANKEL:

Q. Could you give us the departmental breakdown of the approximately 122, I believe you stated, on the south side of the alley?

* * * *

A. Like I say, this is strictly rought.

Q. We understand.

A. Paint shop, which is 2. Hydratel I figured around 25. Tool and Die 10, Milling 30, Tool Crib 2, Engine

Lathe 25, Turret Lathe 20, Tool and Cutter Grind 6, Hones 2.

Q. Now, did you have occasion to go to these other departments on the night shift?

A. Yes.

Q. And that was in the performance of your duties as a Grievance Committeeman?

A. Yes, it was. It was also in performance of the Safety, too.

Q. All right. Now, can you tell us whether or not, when you went through these other areas, you noticed whether the other departments were working overtime?

[360] A. I had many occasions to notice this, due to the fact that I had to keep up with the overtime, to keep it more or less equalized.

Q. Would you explain that to the Court? What do you mean you had to keep up with the overtime to see it was equalized?

A. Well, under our contract provision that affords equal—equalization of overtime—

Q. Is there a provision in the contract that provides for equal distribution of overtime?

A. Yes.

Q. Is that within departments?

A. Yes.

Q. And it was part of your job to police that provision?

A. It was.

Q. How often would you say that these other departments were working overtime? Again give us a rough estimate.

A. I have given that much thought and I would say 75 to 85 percent of the time the whole shop was during this period.

* * * *

[361] THE COURT: How many were on the swing shift?

THE WITNESS: I figured around 200, possibly 225.

MRS. JANAVS: There is a stipulation by the parties on that, your Honor. About 200 on swing shift.

THE COURT: All right. 200 on swing shift.

* * * *

[363] Q. I see. You worked on what you call the afternoon shift, 3:30 to 12:00.

As a member of the Safety Committee your responsibilities include both the north and south side of the alley?

A. Yes.

Q. During your duties did you have occasion to go to the north side of the plant during this period?

A. Yes, I did.

* * * *

[366] Q. What is your estimate of how often these other departments worked overtime?

A. I'd say on an over-all picture of the whole plant probably 75 per cent of the time.

Q. Now, with respect to your side of the alley, the south side, when departments worked overtime did everybody in the department, in your department, I should say, did everybody work overtime, in your department, the Hydratel department?

A. Normally, yes. Then it did vary.

Q. And is the same true of the other departments?

A. Yes, all except for, I would say, the exceptions to that rule would have been the Engine Lathe department and Turret Lathe department; they were pretty well steady on a nine-hour basis.

Q. Do you know about the north side of the alley, whether when those departments worked overtime everybody worked, or just some, if you know?

A. I could not definitely say.

Q. Now, Mr. Redell, did you attend the Union [367] meetings?

A. Yes, sir.

Q. Would you tell us how many you attended?

A. I have not missed a meeting.

Q. Now, at the meeting for your shift, did you have some sort of function?

A. While we had what we call a split meeting I was appointed as an Outside Guard.

* * * *

Q. That was at the late meetings?

A. That was at the swing shift meeting.

Q. Can you tell us what you did as Outside Guard?
A. Well, I tried to see to it that everybody signed the register.
Q. What did you do to try to see to it?
A. Well, I tried to remind men at all times to sign it when they came in.

* * * *

[368] Q. What did you tell them, if anything?
A. Well, I just told them to sign the register.
Q. Now, how long was the register, the sheets of paper, kept outside the meeting hall?
A. It was out all the way through the meeting.

* * * *

[369] Q. Now, with respect to those statements made by Mr. Rose, regarding merely the signing of the attendance register, do you recall when those were first made?
A. You mean as far as signing the register?
Q. Right.
A. This was made periodically all the way through.
Q. What do you mean by "all the way through"?
A. I mean ever since the organization.
Q. Was there anyone else who talked about the attendance register?
A. Well, I do recall it being brought up at a few meetings.
Q. What was said?
A. Well, that was maybe toward getting members to attend. I imagine you would find it brought up at any meeting, "If you don't like the way things are being done get out to the meetings so that you'll be eligible [370] to run for office."
Q. Did anybody say that, particularly the way you just described it?
A. I have heard this on numerous occasions right at the meetings.
Q. Who said it?
A. Well, I have heard President Ken Rose say it himself.
Q. This was with regard to what?

A. Different matters that come up. Certain people wouldn't like the way they were handled.

Q. What would Mr. Rose say to that?

A. "Well, if this doesn't meet with your approval, come out and attend meetings so that you can go ahead and have a say in it and you'll be able to run for office and change it."

Q. Mr. Redell, was the subject of the number of meetings required for eligibility ever brought up at the meetings?

A. Yes, I believe it was brought up quite a few times, myself.

Q. By whom?

A. It had been mentioned from the Chair.

That is Mr. Rose again?

A. That is right.

[371] Q What did he say about it?

A. That the attendance had to be 50 per cent in order to be eligible to run for office or for Grievance man.

Q. Did he say that alone or did he say anything else with it?

A. I wouldn't rightly say. I know it had been said alone.

Q. Anything said about working overtime?

THE COURT: An excuse for attending meetings?

THE WITNESS: For excuse, yes.

THE COURT: What did he say about that?

THE WITNESS: It had been mentioned, that if you were working—the only excuse was if you were working or if you were on Union business, was the only reason that you would be excused.

* * * *

[383] Q. Now, as far as those 200 people working in a swing shift are concerned, do you have any estimate at all as to how many people that were working that shift in June '67, or let's say as of April '67, had started working on that shift in August 1965?

A. I would say the majority of the people that were working in August of '65 on swing shift were still working on swing shift in '67.

* * * *

[389] MR. GOTTESMAN: Before we call the next witness, we have talked with counsel for the plaintiff and we have a few stipulations of fact I think we can offer at this time conveniently.

THE COURT: All right.

MR. GOTTESMAN: First I would offer a stipulation that United Steelworkers of America have approximately 3,700 Local Unions, all of whom are bound by its Constitution and its standard By-Laws and its Local Union Election Manual, which are plaintiff's Exhibits 1, 2 and 3, I believe.

MRS. JANAVS: So stipulated.

• • • •

[392] MR. GOTTESMAN: Then I would offer a stipulation that if I were—and we have discussed this among counsel—that if I were called as a witness I would testify as follows: I was present at the conventions of the International Union, United Steelworkers of America, in 1962 and in 1964.

That the Union holds its conventions every other year. And that prior to the 1962 convention the term of office provided in the Constitution for Local Union officers was two years.

That at the 1962 convention the delegates voted to change the term of office to three years and that became effective with what was the next election thereafter, namely, the 1964 election.

In the 1962 convention no change was made in the provision of the Constitution dealing with meeting [393] attendance. At that time that provision stated that a member had to have attended 12—I guess one-half of the meetings during the preceding 24 months.

At the 1964 convention I served as counsel to the Constitution Committee of the convention. The International Officers had not recommended any change in the constitutional provision dealing with meeting attendance.

However, from the floor of the Constitution Committee a number of delegates proposed that that provision be changed so that it was co-terminus with the new term of office, namely, three years. Therefore, it recites the num-

ber of meetings that had to be attended was one-half of 36.

The Chairman of the Constitution Committee, who was a member of the International's Executive Board, stated that in his judgment that change was not required.

However, the delegates, when they voted upon it in the Constitution Committee, voted that the change should be made or at least should be recommended to the floor of the convention as a whole. The majority so voted. The Constitution Committee made that recommendation to the convention as a whole and it was adopted by the convention as a whole.

So that beginning with the 1964 Constitu- [394] tion the provision has appeared that the meeting attendance requirement is one-half of 36 meetings.

Since the '64 convention took place, after the 1964 elections, the first elections which were run under the new half of 36 requirement were those which were run in 1967.

I might add for clarity that all of the Local Unions in the Steelworkers elect at the same time, namely, in June of a year designated in the Constitution. So that in June of 1967 all of its Local Unions were conducting elections.

I offer that if called I would have so testified.

MRS. JANAVS: So stipulated. We have no cross examination as to this testimony.

THE COURT: Very well. It still is three years, as I understand it.

MRS. JANAVS: Yes.

MR. GOTTESMAN: The term of office—since '62 the term of office has been three years. Since '64 the meeting attendance requirement has been three years.

THE COURT: All right.

• • • •

[396] GLENN ROSS,

a witness called on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

• • • •

Q. Mr. Ross, are you a member of Local Union 6799 of the Steelworkers?

A. Yes.

Q. Are you employed at the Howmet Corporation, H. W. Loud plant?

A. Yes.

* * * *

[397] Q. Had you been employed at the plant from May 1965 until October 1965?

A. No.

Q. During the period October 1965 through April of 1967 on which shift did you work in the plant?

A. Night shift.

Q. And in which department on the night shift did you work?

A. Turret lathe.

Q. During that period of time—I am talking now about October of '65 through April of '67—were there occasions on which you worked beyond midnight and until 1:00 o'clock or later?

A. Yes.

Q. Can you estimate the frequency of times during which you worked until 1:00 o'clock or later?

A. At least 98 percent, I would say. Maybe a hundred per cent.

Q. Now, when you worked that late, were you the only one in your department who was working that late?

A. Normally everyone in the department worked [398] that late.

Q. Now, when you were working late, did you have an opportunity to observe whether employees in other departments of the plant were working late?

A. Yes.

Q. Are there any particular departments which you observed?

A. Engine lathe normally worked at least nine, very often ten hours, and Milling worked at least nine.

Q. When you say "at least nine", that would be until what time?

A. 1:00.

Q. Apart from Engine lathe and Milling, did you have an opportunity to know whether other employees on the swing shift were working until 1:00 o'clock or later?

A. When I go out to the car in the parking lot I would see people that I recognized as being from other departments.

Q. You say when you were going out to your car after you had finished working?

A. Yes.

Q. Is that when you are referring to?

A. Yes.

Q. Now let me bring you forward to May of 1967. Did you attend the Local Union meeting in May of 1967 in [399] which candidates were nominated, Mr. Ross?

A. Yes.

Q. Were you nominated for an office?

A. Yes.

Q. Tell us what office you were nominated for.

A. Financial Secretary.

Q. Did you decline the nomination?

A. No.

Q. To your knowledge was your eligibility then checked by the Election Committee of your Local Union?

A. Not at that time, I don't think.

Q. Well, subsequent to the meeting?

A. Yes.

Q. Did you receive a communication from the Election Committee indicating whether or not you had been found to be eligible?

A. Yes, it was handed to me.

Q. Was it a written or oral communication?

A. Both. He handed me the letter and I read it, and he—

Q. Will you tell us what the letter said?

A. It said that the record showed I had not attended enough meetings to be eligible, but if I wished to contest it they would consider it—reconsider it.

[400] Q. Did you believe that you were, in fact, eligible?

A. Yes.

Q. Did you contest the letter?

A. No, I didn't. I didn't, and I told the man at the time I didn't wish to.

Q. Can you tell us why—did you tell him why you didn't wish to contest it?

A. Yes.
Q. What did you tell him?
A. I told him I didn't really want the office, anyhow.

* * * *

CROSS EXAMINATION

BY MRS. JANAVS:

Q. Mr. Ross, when you were nominated initially at the meeting, why didn't you decline the nomination at that time, if you really didn't want the office, anyhow?
A. Because too many people let George do it, and I thought if the people wanted me I would serve.
Q. So then subsequently you decided that you didn't really want to?
A. I knew that ahead of time, but I would have [401] accepted.

* * * *

FLOYD J. GIBSON,

a witness called on behalf of the defendant, having been previously duly sworn, was examined and testified as follows:

* * * *

[405] Q. At any time when you attended meetings, did you hear the President of the Local Union make comments about the attendance register?
A. Yes, I did.
Q. Do you recall the substance of what he said?
A. Well, he told the people that the register was the official record for running for office. You had to attend 50 per cent of the meetings to be able to run for office, and that that was the official record.
Q. Did he say that on one occasion or more occasions than one?
A. More.
Q. Do you have any idea roughly how many times it was said? During the period—we are talking now August '65 to April '67.
A. It would only be a guess.
Q. Would you give us your best guess?

A. Four to six times probably.

* * * *

[406] THE WITNESS: Yes, sir, he told that—he said that anybody that was at work and had to work later than the Union meeting time would be eligible to run.

THE COURT: He said that at the same time that he spoke of the register as being the official attendance record?

THE WITNESS: Yes, sir.

MR. GOTTESMAN: I have no other questions.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MRS. JANAVS:

Q. Just a couple of questions. Mr. Gibson, when you started working on the swing shift, let's say, approximately August 1965 on to June 1967, to your recollection were most of the same people still on swing shift in June '67 that also had started working on the swing shift in August of '65?

A. Yes.

Q. Can you give us an estimate, your best [407] estimate as to what number or what percentage might have changed or might have no longer been on that shift, of the ones that started in August of '65?

A. I don't believe anybody changed shifts during that time, because I was the junior man and I was about third or fourth to go on days, and we all went on days about the same time.

Q. So that as far as you recollect the people that started working swing shift in August 1965 continued to do so all the way up to June '67?

A. Yes, ma'am.

* * * *

[408] Q. Do you recall if, in the very early meetings, the first meetings in 1965,—let's say August and September 1965—if in any of those meetings the President advised the members who were in attendance that they would have to attend one-half of the meetings to qualify for office in 1967?

A. Yes.
Q. He did advise them?
A. Yes.
Q. And do you recall as to whether at any one of those meetings at which he said that the attendance register would be the only means of proving attendance?
[409] A. Yes.
Q. It was in '65 that he stated that the attendance register would be the only means of proving attendance?
A. Yes.
THE COURT: He said, also, at that same time that you would be excused from attendance if you were working?
THE WITNESS: Yes, sir.

* * * *

[415] MR. GOTTESMAN: I think the two left are W & X.
MRS. JANAVS: We will be objecting to the introduction of each one of those exhibits. Does the Court wish to hear the objection at this time?
THE COURT: Yes:
MRS. JANAVS: This is a tabulation of "Number of candidates appearing on ballot for five principal offices in each of the Steelworkers Union elections in [416] which the Secretary of Labor is challenging application" of this rule. This is all over the country.
Our objections are that there is no showing at all that these particular cases are at all similar to this.
First of all, there are only five of the people that have been tabulated.
The Trustees and the Guards and the Guides, who also come under the same requirement, have not been tabulated at all. And further if this is intended to show that these offices or a lot of these offices are contested, it is not our contention that they have to be uncontested in order for a rule to be unreasonable. There can be contest and still the rule can be unreasonable, so that this is not relevant.
Furthermore, as to a number of these Unions the number of members in each Local are substantially different.

For example, I'm advised Local 1219 is a 9,000-member Union, as opposed to this 600-member Union here. So that I think there is not sufficient foundation here to show that any figures given in this chart are relevant to what we have before the Court here.

THE COURT: First tell me, what are you offering W for, for example?

[417] MR. GOTTESMAN: We are offering—one of the—I think the best way to explain it is that in a couple of cases that have been before the Court, they have cited as one of the reasons they were knocking out—or holding invalid the attendance requirement—these are the Glass Bottle Blowers cases—

THE COURT: Yes.

MR. GOTTESMAN: —was that so few people were eligible that there was no contest and that, therefore, you can't have a very democratic Union when there is nobody there to run against the incumbent.

THE COURT: Yes.

MR. GOTTESMAN: Now, in Exhibit W we took the eight lawsuits which the Secretary of Labor has brought against us challenging our meeting attendance rule, because we want to show that not only in this case but also generally in all of them, in fact, there were contests.

We think it is relevant for two reasons. One, it goes to the Secretary's whole policy here as to what it is that makes a meeting attendance rule unreasonable, because he says it is in the circumstances, and the circumstances in these cases in general do not show a lack of contest.

We also have it in, because, as I indicated [418] in my opening argument we, at least, contend the meeting attendance rule should be judged as a nationwide rule and not on a case-by-case basis, our problem being that there is no other way to implement a constitutional provision.

So what W and X together are designed to show is that in general, so we chose, even in those eight cases the Secretary has selected as his particular objects of attack, there are generally contests and frequently substantial number of contestants.

X is a survey which we took of all the Local Unions in the district in which this Local Union resides, with 500

or more members, and we took the office of the President and showed the extent to which contests occurred for that office, notwithstanding that they are all governed by the same meeting attendance rule.

It is our desire to show that the rule in general, as applied not only to this Local but to the Locals which are under its domain, has not had the effect of inhibiting contests for office.

MRS. JANAVS: As I stated before, of course, we do not contend that there has to be an inhibition on the contests for office necessarily.

Furthermore we have here a tabulation, as far as Exhibit X is concerned, dealing only with the office [419] of President, which I think is not representative or does not really prove anything in this case, where we are dealing with a number of other offices, and there is no information supplied as to those.

Also the members in these different Locals are substantially larger in many, many cases than here. We also don't know what shift these people may have been working in their Unions and what their situation might have been as far as attending meetings is concerned.

Now, the same thing I mentioned also in Exhibit W—

THE COURT: Just a minute, please. There is no position taken by the Government, is there, that there should be more nominees for these various offices and that the restriction of the meeting attendance has resulted in their being a fewer number of nominees? That isn't your position, is it?

MRS. JANAVS: No, we do not contend—well, in a broad sense, yes, because we had a number—only 36 people that qualified.

* * * *

[420] So I think in a broad sense we contend that the people did not have an opportunity to nominate—

THE COURT: Well, if you are contending [421] that there should have been more nominations,—

MRS. JANAVS: Well. not as—

THE COURT: —why, then I will consider W and X. If you are not, why, then I don't see it is material at

all. I doubt it is material even with it. It wouldn't make too much difference to me,—

MRS. JANAVS: We don't contend that—

THE COURT: —as to how many nominations there were in some other Union.

MRS. JANAVS: No, we would not contend there should have been more nominations as to any one particular office.

We only contend there should have been a broader base from which to nominate for any office.

THE COURT: I will sustain the objection to Exhibits W and X. I can't see they really add anything to the issues here.

* * * *

[422] MR. GOTTESMAN: I request that these be placed in the rejected exhibit file.

THE COURT: They are marked for identification.

* * * *

[433] LOS ANGELES, CALIFORNIA, MONDAY, APRIL 21, 1969. 1:30 P.M.

THE CLERK: 68-326, H. Willard Wirtz v. Local Union 6799;

Further court trial.

MRS. JANAVS: Ready for the plaintiff, your Honor.

MR. GOTTESMAN: Ready for the defendants, your Honor.

THE COURT:

* * * *

Are there any comments that either side wants to make, now, before ruling?

MRS. JANAVS: I have no further comments, in addition to what our memorandum states, unless the Court has questions.

* * * *

[434] MR. GOTTESMAN: We'll rest on our memorandum.

THE COURT: Very well.

Now, the percentages of 6.3 per cent is limited, of course, to the ones that the attendance record, that is, the register at the meeting, showed in actual attendance more than half the meetings involved in this particular proceeding.

But I think there were more, if the records had been checked, all the records had been checked, that there were more that did qualify. Of the swing shift, there were some of those who had attended some meetings. Of the 36 on the swing shift I don't think there were many who attended all meetings. Several of them had attended several meetings, and with the very liberal rule of giving them credit they would have qualified. My estimate was that around 12 per cent at least would have qualified, when you consider the swing shift and the rule of giving credit.

Now, I have concluded that the plaintiff may include in its Complaint violations, which are disclosed by investigation by the Secretary of Labor, that is, conditioned upon the defendant having a reasonable [435] time to make the corrections.

This is true, I think, even though the alleged violation was not brought to the attention of the Secretary by the complainant, by an individual member of the Union who was filing the Complaint.

In this case we have the Complaint for the using of funds for the pamphlet. But there was no complaint with respect to the qualification for members or the unreasonableness of the requirement for qualifications of officers, I should say.

I think the Secretary is within his rights in raising that issue and I think that under the cases, as I read them, that it is appropriate, if the defendant has the right and is given the time to make any appropriate corrections.

* * * *

[Plaintiff's Exhibit 2]

[Article VII]

* * * *

Sec. 9. No member shall be eligible for election as a Local Union Officer or Grievance Committeeman unless

(a) He shall have been in continuous good standing for a period of twenty-four (24) months immediately preceding the election, or if his Local Union has been in existence for a lesser period prior to the election, he must have been in continuous good standing from the time that he joined such Local Union; and

(b) He is employed in a plant or mill or other place within the jurisdiction of the Local Union; and

(c) He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June, 1967, election, unless his Union activities or working hours prevented his attendance.

Sec. 10. A Workmen's Compensation Committee and a Safety and Health Committee, under the direction of the International Union or its designated representative, shall be established in each Local Union.

Sec. 11. A Civil Rights Committee, under the direction of the International Union or its designated representative, shall be established in each Local Union to implement our Union's commitment to the protection and extension of civil rights and liberties.

[Plaintiff's Exhibit 5]

The International Executive Board
United Steelworkers of America

July 18, 1967

In accordance with Local Union Elections Manual, Page 32, I am appealing the failure of the membership to make a decision on my protest of the Election held by Local Union #6799 because the President, Ken Rose, ruled my protest "OUT OF ORDER" and did not allow the membership attending the Swing Shift Meeting to hear such protest, thereby failing to comply with that portion of Page 31 on REPORTS, PROTESTS AND APPEALS!

My protest of the election was based on the fact that all proceedings appear to have been engineered by Brother Frank McKee, our Staff Representative, over a period of several months; including an alleged statement by Brother McKee at least two weeks prior to our nominations in Local #6799 supposedly made in the hearing of Brother Delbert Poole of Local #6703, Riverside, Calif. that he, Brother McKee, could tell who would be elected in Local #6799.

At our Nominations Meeting, over 80% of the nominations were made by members of the Local Executive Committee from the platform; NOT FROM THE FLOOR as stated under NOMINATIONS on Page 18 and the membership was informed by Brother McKee and President Rose that no second was needed for a nomination.

A day or two later, President Rose, Treasurer Otis Joiner, Trustee Mel Scruggs, and Grievance Committee Chairman Tom Pipkin were in the Company parking lot in President Rose's camper when I arrived there after work in response to a request by President Rose. They had the Local #6799 Attendance Register and had been checking the nominees for eligibility; I pointed out that we candidates had absolutely no business doing this as it was the duty of the Election Committee, and then I proceeded to help check-out the remaining few nominees. President Rose stated that they were giving one Brother Jerry Wooten credit for three (3) meetings in order to make him eligible, whereupon, I pointed out that this was impossible for not even the Election Committee could

grant credit when the man's shift did not start until after our Regular Meetings had been in session for at least a couple of hours.

That night I typed five (5) copies of that section of the Local Union Election Manual "Duties of Election Committee (Tellers)" and the following morning did present these five copies and the one copy of the Local Union Election Manual to the appointed Chairman of our Election Committee. At this time, I did inform the Chairman that their duties were to comply with this Manual as a separate entity and not to accept any Lists of Eligible Nominees nor any instructions that were not completely in accord with the Election Manual from anyone including myself.

In the following period, up to and including the Regular Meeting of July 10, 1967 Swing Shift when the Chairman of the Election Committee reported the results of the Election to the membership, I have been given to understand that the Election Committee operated under the instructions of Ex-officio Committee member Ken Rose (President and Candidate) and Brother Frank McKee, Staff Representative.

On election day, arriving at the polls at four-fifteen in the afternoon I was informed the booths had been taken down just five minutes before because the Committee thought it was going to rain and since everyone knew how I was going to vote I could just mark my ballot in plain sight of everyone since it would make no difference anyway!

At approximately ten-forty-five (10:45 PM) that night June 12, 1967 my wife (just out of the hospital from major cancer surgery) was awakened by a telephone call from Brother Delbert Poole, Local Union #6703, Riverside. I just then arrived from taking my son to report to the United States Navy for boot-training, and took the phone. Brother Poole talking to me from the Eagles Lodge Hall, 103½ East Holt Blvd., Ontario, Calif. did inform me that the Election Committee of Local Union #6799 had just finished counting the ballot for the election of officers and that since the "suggested list of candidates" had received a "Mandate" from the membership would I be a good fellow and support them? I replied,

"Del, I support people only so far as they comply with the Constitution of International Union, United Steelworkers of America, the By-Laws for Local Unions, the Local Union Elections Manual, and the Laws of the Land, because people come and go. Some leave to go to work under other unions or even for Non-union employment, but this Organization must and will go on under its Precepts and Principles and the Pledge which I took when I became a member, and before that when I accepted the United Steelworkers of America and became a Volunteer Organizer at a time when my department was not part of the bargaining unit and we were not allowed to vote!" I then asked Brother Poole what were all the voices in the background and he informed me the Election Committee was counting the Grievancemen ballots and the rest was coming from the bar.

At the Regular Meeting for the Swing Shift on July 10, 1967 12:45 Noon after the meeting was opened President Ken Rose informed the membership that since Brother McKee couldn't be here the Sub-District #2 Director Brother Keith Giesert would be. Brother Rose then pre-empted the Orders of the Day to allow the Chairman of the Election Committee to make his report, immediately a member of Brother Rose's plant department made a motion to accept the report and when I raised a Point of Order asking to make a Protest (as on Page 31 of the Election Manual) Brother Rose informed me I was "Out of Order" we have a motion on the floor and that I could protest to the whole world after the vote was taken. After the vote was taken and Brother McKee had come in, President Rose asked Brother McKee to swear in the new officers and I raised a "Point of Information" by asking, "How we could ignore two years of having a split-meeting requiring a carry-over from Days to Swing or Swing to Days on every motion before it could be passed, and swear anyone in on the vote of the Swing Shift only?" President Rose asked Brother McKee to answer. Brother McKee said, "This will be all right. I can see nothing wrong with it!" Thereupon, Brother McKee proceeded to swear in all officers elect and grievancemen-elect who were present.

Brother Keith Giesert arrived shortly after and expressed some surprise that Brother McKee had sworn in the new official since he, Brother Giesert had come to swear them in! This surprised me considerably, because this appeared to be a clearly premeditated plan to knowingly have Brother Giesert swear in officers on a motion that had not been legally acted upon by all members of our split Regular Meeting!

Last but not least, I as the retiring Recording Secretary left the form provided by the International Office with Election Committee prior to the Election to be signed by those five members. I did not sign this form, and did not mail it to the International Secretary-Treasurer!

With the preceding and whatever the International Executive Board may find pertinent in the fact that to the laymen's eye—in comparison to lists of checks disbursed, ballots for conferences, and organizing material typed and run-off in the Sub-District office, that at least some of the Campaign Literature used in this election was composed by Brother McKee and run-off in the Sub-District office I must ask that the International Executive Board do:

(1) Declare this Election Null and Void.
(2) Bar Myself and any other member who has held any elected position, either as an Officer or Grievance Committeeman from eligibility.
(3) Cause a Special Election to be held with all remaining members eligible for nomination and election.
(4) Provide all members wth adequate information and education concerning their rights, priveliges, obligations and duties so that Local Union #6799 may become the most solid and enthusiatic local in the history of the United Steelworkers of America

I have written this because I firmly believe that the Principles and Precepts of the United Steelworkers of America particularly as evidenced in Local Union Electon Manual, Page 40:

CONCLUSION

> Our Union is dedicated to perpetuation of the cherished traditions of our democracy and to guaranteeing to all members in good standing the fundamental democratic right of the franchise and free elections. Scrupulous conformance with the foregoing rules and procedures for Local Union elections will assure the fulfillment of these principles and the conduct of fair and impartial elections.

should be spread through-out the country and around the world. We, the United Steelworkers of America, could by diligent application of our ideals and actual practices accomplish more than governments, law-enforcement agencies, and armies!

Fraternally,

/s/ Nicholas D. Hantzis
NICHOLAS D. HANTZIS
944 North Garey Avenue
Pomona, Calif. 91767

P.S. Enclosed and attached copy of letter to I. W. Abel, President which I have never discovered or been informed if an answer was received or not?

P.P.S. The Ballot Box was reopened on Wednesday, June 14, 1967 in the presence of others than the Election Committee and placed in a wooden box with lock & key, although no seal is affixed.

Nicholas D. Hantzis
Local Union 6799
United Steelworkers of America

10 May 1967
103½ East Holt Blvd.
Ontario, Calif. 91761

I. W. Abel, President
United Steelworkers of America
1500 Commonwealth Bldg
Pittsburgh, Pa.

Brother Abel:

Enclosed copy your wire to Frank S. McKee, Repreentative, Sub-District #2, District #38 dated May 9, 1967 necessitates this challenge of the validity of the information on which you must have based this decision to count Regular Meetings beginning in August, 1965:

Point #1:

The placing of the members of this LU in good standing thru utilization of Article XI, Section 8 of the Constitution in 1965 enabled the membership to vote in the election of our present Officers, including myself.

Point #2:

Being duly qualified Officers, we did hold Regular Meetings in both June and July, 1965 altho our agreement was not executed until July 16th, 1965, and the members of this LU did both attend these meetings and make, second and pass motions.

Point #3:

The above facts being recorded in our Minutes, showing the members who signed the Attendance Register to be in goodstanding at these meetings, must then necessarily indicate that these members may legally count this attendance towards any and all eligibility requirements for our coming elections to be held on June 12, 1967!

Point #4:

Since our greatest attendance was at these two meetings failure to allow this attendance count will deprive all members, except we Officers who have been in regular attendance, of the qualifying attendance for four meetings towards eligibility!

Point #5:

The major consideration is, that, by not counting these two meetings, we are opening to challengable doubt the legal validity of our original election and the ensuing two years of administration of the affairs of this Local Union.

NOTE:

I have written this as an individual member of the United Steelworkers of America, and not in my official capacity as an Officer the Recording Secretary, of this Local Union #6799. Therefore, I will appreciate your answer being sent to this Local Union and our Staff Representative, Frank S. McKee, District #38.

WESTERN UNION
TELEGRAM

120 6P PDT MAY 9 67 LA195 PC156
P PGHHO 16 PDHH PITTSBURGH PENN 9 220P
EDT FRANK S MCKEE REP USA DIST 38
1771 "D" STREET SAN BERNARDINO CALIF
REURTEL MEMBERS OF LOCAL UNION 6799 WOULD HAVE TO HAVE CREDIT FOR ONE HALF THE REGULAR MEETINGS HELD BEGINNING AUGUST 1965 TO MEET THE MEETING ATTENDANCE REQUIREMENT
I W ABEL PRES UNITED STEELWORKERS OF AMERICA (22).

[Plaintiff's Exhibit 6]

I. W. ABEL
PRESIDENT

WALTER J. BURKE
SECRETARY-TREASURER

JOSEPH P. MOLONY
VICE PRESIDENT

UNITED STEELWORKERS OF AMERICA
AFL-CIO-CLC

1500 Commonwealth Building
Pittsburgh, Pa. 15222
Phone: 471-5254
Cable Address: USWA

August 31, 1967

Nicholas Hantzis, Recording Secretary
944 North Garey Avenue
Pomona, California 91766

Re: Case #E-1079—Election Appeal
Nicholas Hantzis—Local Union 6799—38

Dear Sir and Brother:

We are enclosing, herewith, copy of report of the International Commission in the above-captioned case.

Be advised also, that this case will be one of those heard by the International Executive Board at its meeting at 10:00 A.M., September 6, 7, and 8, 1967 in the Urban Room (17th Floor) Penn Sheraton Hotel, Pittsburgh, Pennsylvania. The International Executive Board will endeavor to conduct hearings on September 6th and conclude on that day. However, the Board may be forced to continue hearings on September 7th and 8th because of the numerous cases docketed for this session.

You may present your Appeal in person or submit a statement in support thereof by mail.

The International Union cannot be responsible for any lost time or expenses incurred as result of your Appeal.

Sincerely yours,

/s/ Walter J. Burke
Secretary-Treasurer

cc: Charles J. Smith, Director
Registered Return Receipt Requested

August 28, 1967

REPORT OF COMMISSION

RE: CASE #E-1079

ELECTION APPEAL OF NICHOLAS HANTZIS

LOCAL UNION 6799—DISTRICT #38
103½ E. Holt Avenue
Ontario, California

The Commission met and heard evidence on the above cited case on August 16, 1967, at 2:30 P.M., at 103½ E. Holt Avenue, Ontario, California.

On August 14, 1967, telegrams were sent to all persons involved in the Election (see Exhibits A & B).

Present at the hearing to testify were the following:

Local Union Officers:

Kenneth L. Rose, President
Mel Scruggs, Vice President
Otis C. Joiner, Financal Secretary
Thomas Pipkin, Treasurer

Election Tellers:

Otto Feenstra, Chairman
Kenneth Eastin
Glenn Greenly
T. C. Lio

Appealer of Election:

Nicholas D. Hantzis (Also former Recording Secretary of the Local Union.)

Testimony shows that nominations were held at the May, 1967 meeting and that the Local Union Election Manual was followed.

Testimony further showed that the protester, Brother Hantzis, did agree that the nominations in May were held according to the Local Union Election Manual.

Testimony shows also that the election was held on June 12, 1967, between the hours of 1:30 P.M. and 6:00 P.M., at the plant gate. It was further brought out that protester Nicholas Hantzis, when arriving at the polls on election day, found that the booths had been taken down; the reason being that it had commenced to rain, but the polls remained open and Brother Hantzis was given a ballot and he did cast his ballot.

On further testimony, it was brought out that at the membership meeting, on July 10, 1967, the election report of the Tellers was heard by both shift meetings and was accepted unanimously.

Nicholas Hantzis testified before the Commission that during the report of the Tellers he attempted to protest the conduct of the election, but President Kenneth Rose ruled him out of order stating that he would recognize him after the Tellers report was given. The motion to accept the report of the Tellers was then presented from the floor, and after this motion was unanimously carried, President Rose asked Brother Hantzis if he then wished to present a protest regarding the conduct of the election.

Brother Hantzis gave no answer to the request.

Testimony further brought out that President Rose, along with Nicholas Hantzis and others, did check on the eligiblty of persons for the forth-coming election prior to the records being turned over to the Election Committee. Testimony failed to substantiate that President Rose had stated he was going to give Brother J. Wooten credit for three meetings.

Protester Nicholas Hantzis agreed that nothing was wrong as a result of the checking of the eligibility list.

Testimony from officers at the Commission hearing did not bring out any evidence that Brother Kenneth Rose or Staff Representative Frank McKee in any way influenced the Election Committee.

Testimony further failed to show that on the day of the election, June 12, 1967, that anything was wrong when the ballots were being counted at the Local Union hall.

Further testimony failed to show any violation at the regular meeting for the swing shift held on July 10, 1967.

RECOMMENDATION OF COMMISSION

In view of the facts related above, it is the opinion of the Commission that the election of officers held on June 12, 1967, of Local Union 6799, was held in accordance with the Local Union Election Manual. Therefore, the Commission could find no basis for the protest of Nicholas Hantzis so the Commission recommends that the appeal of Nicholas Hantzis be denied and the report of the Election Tellers stand as reported.

Respectfully submitted,

/s/ G. J. Conway
G. J. CONWAY
Commission Chairman

/s/ Wm. Frank McCaskell,
WM. FRANK MCCASKELL
Commission Secy.

NOTE: Enclosed are the Minutes for the Local Union Membership Meetings.

EXHIBITS A & B

Telefax

WESTERN UNION

SENDING BLANK

Call Letters XKC FAX PD

Charge To UNITED STEELWORKERS OF AMERICA

HUNTINGTON PARK, CALIFORNIA

AUGUST 14, 1967

RUSH DELIVERY

Nicholas D. Hantzis
944 North Garey Avenue
Pomona, California 91767

You are instructed to appear at a hearing on the protest of the election of officer of Local 6799, on Wednesday, August 16, 1967, at 2:00 P.M., at 103½ E. Holt Avenue, Ontario, California.

Wm. Frank McCaskell, Commission Secretary
G. J. Conway, Commission Chairman

Sent 11:12 AM 8/14 D

Send the above message, subject to the terms on back hereof, which are hereby agreed to

PLEASE TYPE OR WRITE PLAINLY WITHIN BORDER—DO NOT FOLD

Telefax

WESTERN UNION

SENDING BLANK

Call Letters XKC FAX PD

Charge To UNITED STEEDWORKERS OF AMERICA

HUNTINGTON PARK, CALIFORNIA

AUGUST 14, 1967

RUSH DELIVERY

Kenneth L. Rose
13086 Cozzens
Chino, California 91710

You are instructed to appear at a hearing on the protest of the election of officers of Local 6799, to be held Wednesday, August 16, 1967, at 2:00 P.M., at 103½ E. Holt Avenue, Ontario, Calif. If you feel that the appearance of other witnesses will be necessary, please notify them to be present.

G. J. Conway, Commission Chairman
Wm. Frank McCaskell, Commission Secretary

Sent 11:10 AM. 8/14 D

Send the above message, subject to the terms on back hereof, which are hereby agreed to

PLEASE TYPE OR WRITE PLAINLY WITHIN BORDER—DO NOT FOLD

[Plaintiff's Exhibit 7]

I. W. Abel
President

Walter J. Burke
Secretary-Treasurer

Joseph P. Molony
Vice President

UNITED STEELWORKERS OF AMERICA
AFL-CIO-CLC
1500 Commonwealth Building
Pittsburgh, Pa. 15222

Phone: 471-5254
Cable Address: USWA

September 14, 1967

Mr. Nicholas Hantzis, Rec. Secy.
USA Local Union 6799
944 North Garey Avenue
Pomona, California 91766

Re: Case #E-1079—Appeal of Nicholas Hantzis, Local Union 6799—38

Dear Sir and Brother:

This is to advise you that the International Executive Board of the United Steelworkers of America, adopted the Report and Recommendations of the International Commission in the above-captioned case, at its meetings on September 6, 7, 8, 1967.

Sincerely yours,

/s/ Walter J. Burke
Secretary-Treasurer

cc: Director Smith (Les Thornton, Acting Director)
Registered Return Receipt Requested

#12658

[Plaintiff's Exhibit 8]

LMWP Oct 12 1967 LOS ANGELES

October 11, 1967

U. S. Office of Labor-Management
300 North Los Angeles St. Rm. #7731
Los Angeles, Calif.

I, Nicholas D. Hantzis, a member of Local Union #6799, United Steelworkers of America located at 103½ East Holt Blvd., Ontario, Calif. am filing this complaint of violations of Public Law 257, 86th Cong., as amended by Public Law 216, 89th Cong. TITLE IV—Elections, in that our required Election of Officers and Grievancemen held on 12th June 1967 was conducted so that violations of Our Constitution and By-Laws, and Local Union Election Manual were committed prior to, during, and after our Election.

(1) At the Nominations Meeting on May 8, 1967 in violation of Article IV, Sec. 6, page 11 of the By-Laws for Local Unions as provided in the Constitution of International Union of United Steelworkers of America, as required on pages 15-16 and Page 18 of Local Union Election Manual that nominations will be made from the FLOOR, the nominations were predominately made by Officers and Grievancemen from the Platform.

(2) The Election Committee (which had no eligibility requirements, as some members had attended only that one (1) meeting at which they were elected) did not impose uniform qualifications of eligibility on all candidates. In that, this Committee did, after some candidates such as George Pruneri and Ray "Red" Mahan had declined nomination as being ineligible by not meeting attendance requirements, give credit to Jerry Wooten for four (4) meetings, in violation of our Constitution and By-Laws, and Local Union Election Manual, in order to make this member eligible as a candidate. And yet, this same Election Committee did disqualify an incumbent Trustee, Elmer Husmann, whose membership card and numerous

witnesses showed had sufficient attendance, because our loose-leaf Attendance Register did not show enough attendance.

(3) Eligibility Requirements were too strict, in that only 10% to 15% of the total membership could possibly have been eligible as candidates—this created an unfair advantage favoring existing Officers and Grievancemen (who naturally were in fairly regular attendance) by the failure of this Local Union to distribute and the International Union to require distribution of our Constitution and By-Laws and our Local Union Election Manual. Despite numerous requests by members, at least 95% of the Local Union Members had never received copies of these or full information concerning these documents! *NOTE:* Yet these documents ARE the rules, regulations, requirements, restrictions, obligations, duties, and privileges of every member of this organization!

Also, in establishing eligibility Pres. Ken Rose and our Staff Representative Frank McKee requested from International-President I. W. Abel that we start counting Attendance in August, 1965. This, I challenged by, twice, writing to International-President I. W. Abel on the grounds that our members had been in good-standing when we received our Charter on May 28, 1967 and when we held our initial Election so how could they legally be deprived of this attendance two years later? (see attached letter and photo-copy of telegram). I have never received any answer, either directly or indirectly.

(4) Campaign material was run-off on Local Union #6799 in discrimination of one candidate only, Pres. Ken Rose. Also, campaign material was made-up and run-off for Ken Rose by Staff Representative Frank McKee (a member of another Local Union) on office equipment of Sub-District #2 on San Bernardino. *NOTE:* (Chairman G. W. Conway of the Election Appeals Fact-finding Commission stated that he saw nothing wrong with this being done, because his Sub-District often allowed the poorer or smaller Locals, who had no equipment or funds, to use the Sub-District's equipment.) (see paragraph #11 of attached Election Appeal letter, Re: Case #E-1079 to W. J. Burke, International Secretary-Treasurer)

(5) Prior to the Election, management personnel (Supervisors Al Lichti, Fred Gollhardt, and James Jefferson) did actively campaign for the slate candidates by advising Local Union members to vote for Pres. Ken Rose and Grievance Chairman Tom Pipkin who had shown their ability to get along with Industrial Relations Director George Morrison and other Management Personnel in the past two years of handling grievances, application of the Agreement and Union affairs.

(6) On Election Day when I arrived the voting booths had been taken down because of rain being imminent (there were intermittent drizzles of a few minutes duration that day) and I was told to vote openly, without a SECRET BALLOT, because everyone knew how I was going to vote anyhow. Voters arriving after I had voted, either marked their ballots in the open or, according to the Election Committee in various cars or trucks parked in the area. The booths were not put up again!

(7) Candidates could not be observers and were not allowed in the area, except to cast their ballot. All attempts, by me, to obtain qualified observers prior to the election were refused by members who did not wish to get involved or who did not want to antagonize anyone over something that was all ready a "lost cause". No one would state that there was any intimidation but Jack Cooper, Juan Mendez, Robert Western, Clarence Cagle, and Verne Carmichael refused. Therefore, I had no one observing the balloting; the moving by the Election Committee of the Ballot Box from the voting area in Pomona to the Eagles' Lodge Hall, 103½ East Holt Blvd., Ontario, Calif. Nor, did I have an observer at the counting of the ballots, which was conducted at said Eagles' Lodge Hall during the Regular Meeting of the Local Union and after the meeting adjourned, at which time there was an unauthorized observer Delbert Poole of Local Union #6703, Riverside, Calif. and several candidates present in the bar area of the Eagles' Lodge Hall while the counting of the ballots was being completed.

The requirement of the Constitution and By-Laws that the Ballot Box be sealed upon completion of the counting, was violated when on Wednesday, June 14th, 1967 the

Ballot Box was opened and the contents transferred to an especially constructed box, in the presence of the Grievance Committeemen and Alternates, and the box was then "PADLOCKED ONLY" and not SEALED as required.

(8) The Election Committee did not properly account for all BALLOTS per the Election Committee Report that several VOIDED BALLOTS were destroyed.

(9) The Election Results were improperly recorded in that Jerry Wooten's name and total votes received was omitted from the posted Election Result totals.

(10) Election Results were not posted thru-out the plant or on our Union Bulletin boards. They were posted only in one location between the Engine Lathe and Milling Departments. Any posting in the Local Union office would not suffice the requirements of Constitution and By-Laws because a member can only get into the Local Office by being able to contact an Officer with keys to the three doors to the Eagles Lodge Hall and the Local Union Office, or if he were a member of the Eagles' Lodge he would be admitted thru two doors to the Hall but still could not get into the Local Union office.

(11) At the July 10th, 1967 Swing Shift Meeting when Pres. Ken Rose violated that portion of page 31, Local Union Election Manual under "Reports, Protests & Appeals, paragraph 2, as required by Article IV, Sec. 6, page 11 of our By-Laws for Local Unions, I raised a "Point of Order" and called this to attention of the meeting. Pres. Ken Rose then did arbitrarily (in violation of Parliamentary Procedure and the Constitution and By-Laws) rule me "Out of Order". (see attached Appeal dated July 18th, 1967) This action was witnessed by Jesse Hansen, Joe Stuckey, Don Redell, Archie Skiles, Dan Rodriquez, Otto Feenstra, and other members present.

(12) My protests to the International Union (see attachments) were to no avail, as results were not based on facts as required under our "Government by Law", but rather on the report and recommendation of the Appeal Commission which was based on opinions and agreements of the violaters as though we are a "Government of Men".

(13) As of today, in violation of Public Law 257-86, as amended by Public Law 216-89, TITLE I, Sec. 101 (a)

(5), after three months of threats of violence, intimidation and attempted coercion; I am now being "DISCIPLINED" by a collusive agreement among the slate of officers that Pres. Ken Rose did file "General Charges" against me because of my protesting these Election Violations and other violations of our Constitution and By-Laws. One of the agreed accusing Officers did Chair a meeting and in violation of our Constitution and By-Laws illegally appoint a Trial Jury who have recommended the Local Union expell me and have the Company fire me after twelve years of employment.

The above mentioned threats and agreement to get me expelled and fired have been made to or in the hearing of the following members: Jack Hill, Hilton Willcox, Jack Cooper, Clarence Cagle, Del Miller, Bob Durr, Eugene Houghton, Loyd Cole, George Aisnworth, Joe Stucky, Don Redell, Ralph Bowman, Al Carlson, Bill Hurd, Verne Carmichael, Dave McPhetridge, Clarence Thomas, Doug Dean, Walt Farmer, Herb Redmon, Art Todd, Glenn Fulton, Juan Mendez, Charles Oakley, Glenn Greenly, and many other members of this Local Union. On Monday, Oct. 9th, 1967, I was told by Supervisor Ray Holtzclaw (quote) "Are you still here. I hear they finally hung you; that you won't be with us much longer. They said they were going to hang you and I guess they did Sunday". Similar statements to this effect were made to other members of this Local Union by Supervisors Fred Gollhardt and James Jefferson; and by Supervisor Tom Pipkin (who was elected to Office and Grievance Chairman at this Protested Election as part of the slate, but who after two years as Grievance Chairman has left the Bargaining Unit to become a Night Foreman-Supervisor as of two weeks ago.

/s/ Nicholas D. Hantzis
NICHOLAS D. HANTZIS
944 North Garey Ave.
Pomona, Calif. 91767
Phone: 622-422

[Plaintiff's Exhibit 9]

Mr. I. W. Abel
International President
United Steelworkers of America
1500 Commonwealth Building
Pittsburgh, Pennsylvania 15222

November 21, 1967

Dear Mr. Abel:

Pursuant to the authority of Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, As Amended, and upon receipt of a complaint, this office has initiated an investigation into an election for the offices of president, vice-president, recording secretary, financial secretary, treasurer, guide, two guards, and three trustees, and which election was conducted by Local 6799, 103½ East Holt Blvd., Ontario, California 91761, on June 12, 1967. Section 402(b) states, in part, ". . . . if he [the Secretary of Labor] finds probable cause to believe that a violation of this title [Title IV] has occurred and has not been remedied, he shall, within sixty days, after the filing of such complaint, bring civil action against the labor organization . . . ."

The investigation thus far conducted established probable cause to believe that the election conducted by LU 6799 violated Title IV in the following particulars:

1. Adequate safeguards to insure a fair election were not provided in that:
   a. Prior to the election the ballots were under the control of the former Recording Secretary, himself a candidate.
   b. No accurate accounting was made of the number of ballots prepared and the number turned over to the Election Committee (401(c)).
2. Members were denied their right to vote for and otherwise support the candidates of their choice in that a candidate was declared ineligible who in fact did meet the candidacy requirements (401(e)).
3. A member was denied his right to be a candidate by reason of being improperly declared ineligible by the Election Committee (401(e)).

4. Members in good standing were denied the right to be candidates and to hold office (subject to Section 504 and to reasonable qualifications uniformly imposed) in the application of constitutional requirements which resulted in approximately 93.7% of the active membership being ruled ineligible (401(e)).

5. The election was not conducted in accordance with the constitution, bylaws and election manual in that a list of those voting was not made and preserved with the election records and the ballot box was not sealed by the Election Committee at the conclusion of the tabulation procedure as required by the election manual (pages 27 and 28).
Money received by a labor organization by way of dues, assessments, or similar levy was used to promote the candidacy of the incumbent candidate for president in that material and equipment furnished by the International Union for the use of the International Staff Representative was utilized to reproduce campaign literature for the incumbent president (401(g)).

6. Four members in good standing were deprived of their vote by the improper voiding of their entire ballots because of errors effecting only certain offices (401(e)).

7. Notice of nomination did not include the proper form for submitting nominations (401(e) and Section 452.8 Title 29, CFR).

In order to conclude this investigation as expeditiously as possible, it would be appreciated if you will communicate with me before December 1, 1967, concerning any additional evidence bearing on the violations or any remedial action contemplated by your office.

Sincerely yours,

Henry A. Queen
Chief, Branch of Elections
and Trusteeships

cc: Mr. Kenneth L. Rose
President, Local 6799
United Steelworkers of America
103½ East Holt Boulevard
Ontario, California 91761

[Plaintiff's Exhibit 15]

Attendance at Union Meetings as a Requirement for Nomination or Election to Local Union Office, as Provided by National Union Constitutions and Bylaws, June 1967 1/

National union 2/	Date of constitution	Number of members 3/ (000)	Attendance requirement 4/	
			Number or percent of meetings	Number of months
Total	72	17,059	(72)	
Constitutions with provision	16	5,476	(16)	
Actors & Artists	6/65	62	-	-
Auto Workers	4/67	1,403	-	-
Bakery & Confectionery Workers	8/66	83	-	-
Bakery & Confectionery Workers (Ind.)	10/65	61	-	-
Barbers	1/66	72	-	-
Boilermakers	5/65	140	(5/)	(5/)
Bookbinders	1/65	62	-	-
Brewery Workers	10/65	55	-	-
Bricklayers	9/66	149	-	-
Carpenters	1/67	800	-	-
Chemical Workers	10/66	93	-	-
Clothing Workers	5/66	382	-	-
Communications Workers	6/66	321	-	-
District 50-UMW (Ind.)	4/65	232	6/ 50%	6 (N)
Electrical Workers-IBEW				
Electrical Workers-IUE	1/67	320	-	-
Electrical Workers-UE (Ind.)	12/65	167	-	-
Engineers, Operating	4/64	330	Majority	6 (E)
Firemen & Oilers	5/66	45	-	-
Garment Workers Ladies	7/65	455	-	-
Glass Bottle Blowers	7/66	68	75%	24 (E)
Glass & Ceramic Workers	9/66	48	7/33-1/3%	7/ 12 (N)
Hotel & Restaurant Employees	7/66	450	-	-
Industrial Workers, Allied	9/65	83	-	-
Iron Workers	1/65	162	-	-
Laborers	10/66	475	-	-
Laundry Workers (Ind.)	5/65	63	-	-
Lithographers & Photoengravers	1/66	53	-	-
Longshoremen	8/63	80	-	-
Longshoremen & Warehousemen (Ind.)	4/67	60	-	-
Machinists	4/67	836	(8/)	(8/)
Maintenance of Way Employes	7/66	141	-	-
Marine & Shipbuilding Workers	10/66	43	(9/)	(9/)
Maritime	10/66	45	-	-
Meat Cutters	7/64	353	-	-
Mine, Mill & Smelter Workers (Ind.) *	10/65	75	-	-
Mine Workers, United (Ind.)	10/64	245	6/ 50%	6 (N)
Molders	8/66	80	-	-
Musicians	9/66	252	-	-
Office & Professional Employees	6/65	70	-	-
Oil, Chemical & Atomic Workers	8/65	165	-	-
Packinghouse, Food & Allied Workers	5/66	135	-	-
Painters	1/65	201	-	-
Papermakers & Paperworkers	10/66	144	-	-
Plasterers	1/65	68	-	-
Plumbers	1/67	285	-	-
Printing Pressmen	1/66	114	-	-

OVERSIZE PAGE SEE NEXT FRAME
FOR REMAINDER OF PAGE

Musicians	9/66	252	-	-	
Office & Professional Employees	6/65	70	-	-	
Oil, Chemical & Atomic Workers	8/65	165	-	-	
Packinghouse, Food & Allied Workers	5/66	135	-	-	
Painters	1/65	201	-	-	
Papermakers & Paperworkers	10/66	144	-	-	
Plasterers	1/65	68	-	-	
Plumbers	1/67	285	-	-	
Printing Pressmen	1/66	114	-	-	
Pulp, Sulphite & Paper Mill Workers				8	(E)
Railroad Trainmen				36	(E)
Railway Airline & Steamship Clerks	8/64	270	-	-	
Railway Carmen	1/64	126	Majority	12	(E)
Retail Clerks	7/63	500	-	-	
Retail, Wholesale	5/66	170	-	-	
Rubber Workers	11/66	170	(12/)	(12/)	
Seafarers	6/67	80	-	-	
Service Employees **	1/65	348	-	-	
Sheet Metal Workers	1/67	100	-	-	
Shoe Workers	6/67	53	-	-	
Stage Moving Picture Operators	7/66	62	-	-	
State, County, Municipal Employees	11/66	281	-	-	
Steelworkers	9/66	993	50%	36	(E)
Teachers	1/67	125	-	-	
Teamsters (Ind.)	10/66	1,651	13/ 50%	24	(E)
Telephone Unions, Alliance (Ind.)	6/59	75	-	-	
Textile Workers-TWU	6/66	182	-	-	
Textile Workers-UTW	9/64	47	-	-	
Transit Union	1/66	103	14/ 12	24	(E)
Transport Workers	5/66	135	(15/)	(15/)	
Typographical	1/67	107	-	-	
Upholsterers	9/66	58	-	-	
Utility Workers	6/67	72	-	-	
Woodworkers	12/65	94	-	-	

1/ This table includes all national unions covered by the Labor-Management Reporting and Disclosure Act having more than 40,000 members as listed in the Directory of National and International Labor Unions in the United States, 1967, Bureau of Labor Statistics, Bulletin No. 1596, 1968, and having 1 or more affiliated local unions filing under the LMRDA. Bulletin No. 1596 does not report membership for the United Mine Workers (Ind.); however, this union is included on the basis of its membership reported in the Directory of National and International Labor Unions in the United States, 1963, Bureau of Labor Statistics, Bulletin No. 1395, May 1964. The constitutions analyzed are those in effect in June 1967, according to reports required under LMRDA that were filed with the Department of Labor.

2/ National unions are identified by short-form titles as used in the Register of Reporting Labor Organizations, Labor-Management Services Administration, 1968; complete titles are shown on pp. vii-xv of that publication. National unions are affiliated with the AFL-CIO, unless identified as Independent (Ind.).

3/ Source: Directory of National and International Labor Unions in the United States, 1967, Bureau of Labor Statistics, Bulletin No. 1596, 1968. The 72 national unions included in this table account for approximately 89 percent of the membership of all national unions reported in Bulletin No. 1596.

4/ Attendance requirement shows the number or percent of meetings which a member must attend during the prescribed number of months immediately preceding the nomination (N) or election (E) of local officers.

5/ Member must attend regular meetings of the Lodge as required by Local Lodge Bylaws to establish eligibility.

6/ Member must attend 50 percent of meetings during each month; if local holds only 1 meeting each month, member must attend all 6 meetings.

7/ Member must attend 1 meeting per quarter in each of the 4 quarters prior to nomination.

8/ Local bylaws may provide an attendance requirement not to exceed 50 percent of the meetings held in the 12-month period preceding nominations.

9/ Local bylaws may require attendance at a minimum of at least 1 meeting per quarter during the 8 calendar quarters preceding the quarter in which nominations are made.

10/ Member must not be absent from more than 2 successive meetings.

11/ Member must attend at least 2 meetings in each of the 2 years preceding the year of election, and 3 meetings in the year of election.

12/ Local bylaws may provide an attendance requirement not to exceed 50 percent of the meetings held in the 12-month period preceding nominations. However, this provision may be suspended by the Local Union Executive Board prior to nominations upon a proper showing that there is an insufficient number of members who meet such attendance requirement.

13/ Mandatory for locals which do not have own bylaws. Locals with own bylaws may provide lesser requirements.

14/ Member must attend 6 meetings during each year.

15/ Local bylaws may require attendance at a "reasonable" number of meetings during the period preceding nominations or elections.

* Merged with Steelworkers July 1967

** Formerly Building Service Employees

LEGEND

This table shows, for 72 national unions, representing 89 percent of the total union membership, which national unions do or do not require attendance at local union meetings as a prerequisite to nomination or election to local union office. The date is as of June 1967, the date of the election in this case. Where no figures or footnotes appear on any line, it indicates that the national union constitution has no meeting attendance requirement of any kind -- either optional or mandatory.

[Defendant's Exhibit L]

February 29, 1960

The Honorable Robert W. Kastenmeier
House of Representatives
Washington 25, D.C.

Dear Congressman Kastenmeier:

This is in further response to your letter of January 19, 1960 in which you requested information regarding the election eligibility requirements in the constitution of the International Union of the United Steelworkers of America. The request for information came to you from Mr. Elmer Dunkel, 721 North Pair Oaks Avenue, Madison 4, Wisconsin.

In our opinion, a provision requiring a member to have attended at least one-half of the regular meetings of his local union for 24 months previous to the election before he may be eligible to hold office, is not unreasonable if it is applied fairly and uniformly to all members. It might well be unreasonable, however, in circumstances in which attendance presented an unusual degree of difficulty for a significant proportion of the membership, as for example, where the local had an extensive geographic jurisdiction. Under the Act, the question of whether a particular qualification is reasonable rests with the courts. The Secretary does not have enforcement authority in this matter.

Sincerely yours,

JOHN L. HOLCOMBE
Commissioner

[Defendant's Exhibit M]

Mr. George Ford
88 Cleveland Park Drive
Spartanburg, South Carolina

February 4, 1966

Dear Mr. Ford:

Your letter of January 18, 1966 to the Secretary of Labor, concerning the election of officers for the Kings Mountain Lodge #43 of the Brotherhood of Railway Carmen of America, has been received by this Office which has administrative responsibility for the Labor-Management Reporting and Disclosure Act of 1959.

In your letter you questioned the propriety under that Act of a restriction on eligibility for union office. The restriction in question is contained in section 26 of the Subordinate Lodge Constitution at page 61 of the Constitution of the Brotherhood of Railway Carmen of America. Section 26 requires a candidate to have attended a majority of the meetings of his lodge during the twelve months preceding the election unless he can convince the membership he had a valid excuse for not being present.

You specifically questioned the application, by the President of the Grand Lodge, of the restriction in question so as to disqualify a candidate for the position of "local chairman." It is not clear exactly which office you meant by the reference to the "local chairman." However, I assume you were referring to the position of Chairman of the Local Protective Board for Lodge #43. I note that the Chairman of such a Board is listed among the officers of a Lodge of the Brotherhood of Railway Carmen by the Brotherhood Constitution.

Title IV of the Act contains requirements for the conduct of union elections. In particular, section 401(e) of that Act provides, in part, that in any union election which comes under the terms of Title IV,

> ". . . every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed. . . ."

In your case, the question would seem to be whether a requirement that candidates for office must have attended seven of the twelve meetings of the Brotherhood of Railway Trainmen immediately preceding the month of the election is a "reasonable qualification uniformly imposed." Of course, the question of whether a particular qualification for office-holding is reasonable will, in the last analysis, be determined by the courts. However, as a general rule, a qualification for office which is reasonably designed to assure that candidates have participated in the affairs of a union is not considered by the Department of Labor to be unreasonable absent special circumstances. Among other factors, the difficulty members have in meeting the requirement, and the actual percentage of the membership which can qualify for office under the rule are considered by the Department and the courts in determining the "reasonableness" of a particular restriction. Questions that would have to be answered are: Are the meetings held at a time when members are generally working? Are excuses adjudicated by the members present at the meetings in a uniform manner? Does a significant portion of the members reside at points not within easy access of the Lodge's meetings?

I am enclosing a copy of the Labor-Management Reporting and Disclosure Act of 1959 and of a Department of Labor pamphlet which explains the necessary elements of a valid union election under that law.

If you have any further questions regarding your rights as a union member under the Act, or the conduct of a specific union election, please feel free to contact our Area Office nearest your home. The address of that Office is Room 330 Peachtree Building, 1365 Peachtree Street, N.E. Atlanta, Georgia 30309. I have forwarded a copy of your letter to the Area Director for his information.

Sincerely yours,

Frank M. Kleiler
Director

Enclosures

[Defendant Exhibit N]

Honorable Jonathan Bingham
House of Representatives
Washington, D. C. 20515

November 25, 1966

Dear Congressman Bingham:

In reply to your inquiry relating to the letter which you received from Mr. Thomas McAdam I can advise you as follows:

Mr. McAdam filed his complaint with the Secretary of Labor on May 29, 1966, alleging violations of the Labor-Management Reporting and Disclosure Act in connection with the election of officers of Lodge 1085 of the Brotherhood of Railway Carmen of America.

The complaint was thoroughly investigated by the Office of Labor-Management and Welfare-Pension Reports; that Office found no violations of the law which may have affected the outcome of the election except in the following circumstances.

Section 481(e) of the Act provides that every member in good standing shall be eligible to be a candidate subject to "reasonable qualifications uniformly imposed." Mr. McAdam and most of the other union members were ineligible to be candidates because Section 26 of the constitution of this organization provides:

> "Any member who desires to be elected to any office in his lodge, must have attended a majority of the meetings of the Brotherhood Railway Carmen of America in the 12 months immediately preceding the month of election unless unable to attend for just and sufficient reasons. A member shall be required to advise the Recording Secretary in a written statement justifying his absence, and this to be done in the current month; a majority vote of the members in attendance at the meeting to determine acceptance or rejection of the offered excuse. A record of attendance and excuses for absence to be kept by the local lodge."

Although Mr. McAdam and other members working nights could have been excused from attending meetings, none of them ought to be excused.

The Department originally concluded that there was nothing patently unreasonable about this qualification on office holding, but that the rule was nevertheless of questionable validity because in operation only a few members of the local besides the incumbent officers had satisfied this attendance requirement. Consequently, civil action on behalf of the Secretary of Labor was filed on May 28, 1966 in the U. S. District Court for the Southern District of New York.

Subsequent to the institution of this action, a general review of attendance requirements as a qualification for office holding was held by the Secretary of Labor. Upon further consideration of this problem it was determined that measuring the reasonableness of a meeting attendance requirement solely in terms of the number of members adversely affected by its application in a particular election tended to unduly penalize the legitimate interest of a union in enocuraging participation in the affairs of the union as well as obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization. Upon reexamination, therefore, it was concluded that it would be less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office) as long as the requirement itself could be reasonably met by all members and was uniformly applied.

The question of whether a qualification on office holding is in itself reasonable is a matter which is not susceptible of precise definition. It cannot be said, however, that under all the circumstances, the meeting attendance requirement of Lodge 1085 imposes an unreasonable burden upon the union members. For this reason, the Department has determined to withdraw the case from court and will do so as soon as appropriate papers for this purpose are prepared.

Sincerely yours,

SAMUEL V. MERRICK
Special Assistant for
Legislative Affairs

[Defendant's Exhibit O]

Mr. Woodrow W. Donald
539 Coal Street
Prichard, Alabama 36610

October 12, 1967

Dear Mr. Donald:

Your letter to the National Labor Relations Board concerning the imposition by your union of certain qualifications on members seeking election to union office has been referred to this Office for reply. The Office of Labor-Management and Welfare-Pension Reports is charged with the administration and enforcement of certain sections of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). This Act requires the reporting and public disclosure of the financial affairs and administrative practices of labor organizations and also sets certain minimum standards for the conduct of elections of union officers.

From the facts in your letter, it appears that the members of your local union work on rotating shifts around the clock; that union meetings are held on the first and third Tuesday of the month at 7:00 P.M.; and that the union has established as a qualification for candidacy attendance at fifty percent of such meetings in each calendar year.

Section 401(e) of the LMRDA provides that in an election required by the Act which is held by secret ballot, every member in good standing shall be eligible to be a candidate and to hold office. However, the eligibility of members to be candidates for union office is subject, among other things, to such "reasonable" qualifications as the labor organization may wish to include in its constitution and bylaws, as long as such qualifications are uniformly imposed on all the members.

The question of whether a particular qualification is reasonable is a matter which often is not susceptible of precise definition. For example, a qualification restricting eligibility for union office to members who meet a requirement involving attendance at a certain number of union

meetings during a given period is not an unusual qualification. Ordinarily, such a qualification would be a reasonable means of encouraging participation in the affairs of the union. However, there may be circumstances in which an attendance requirement would not be reasonable. For example, if members must work during the time when meetings are held, a requirement of attendance at a given number of meetings may be unreasonable in its application, when there is not adequate provision for excused absences for members who are working at the time meetings are held.

Since you did not state the name of your union, we were unable to check its constitution and bylaws. Generally, a provision requiring attendance at fifty percent of the union's meetings for a period of one calendar year would not be considered by this Office to be unreasonable. However, if the work shifts are rotated in such a way as to make the effect of the provision one which would require more than fifty percent attendance during the year, serious question would be raised as to the reasonableness of the rule. Thus, if members work on the night shift on eight of the 24 scheduled meeting nights, it would be possible for them to attend a maximum of only 16 of these meetings. Eligibility predicated on attending 12 of these meetings during the year may under such circumstances not be considered reasonable unless the absences due to night work are excused.

I am enclosing a copy of the Act, the Regulations and Interpretative Bulletins, and the pamphlet, "Electing Union Officers," for your information.

Should you have further questions about the Act, it may be convenient for you to contact our Atlanta Area Office. The address is Room 317, 1371 Peachtree Street, N. E., Atlanta, Georgia 30309. The telephone number if Code 404, 526-5351.

Sincerely yours,

FRANK M. KLEILER
Director

Enclosures

[Defendant's Exhibit P]

October 27, 1967

Honorable Jack Edwards
House of Representatives
Washington, D. C. 20515

Dear Congressman Edwards:

This is in reply to your referral of October 19, 1967, of a letter from a constituent describing rules governing eligibility to run for office in a local union. You have asked the Department of Labor for an opinion on whether the facts stated in this letter constitute a proper basis for action by the Department.

From the facts in your constituents' letter, it appears that his complaint centres around an eligibility qualification in his International Union's constitution and bylaws which requires that a member attend 50% of the local's regular meetings during the six-month period prior to nominations in order for the member to be eligible to be nominated to run for local office. In addition, your constituent complains that a majority of the local members work a rotating shift, thereby making it difficult for the members working during the time of the meeting to satisfy the 50% attendance requirement.

As you may know, Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), sets forth certain minimum standards for the conduct of elections by union officers. Section 401(e) provides that in an election required by the Act which is held by the secret ballot every member in good standing shall be eligible to be a candidate and to hold office. However, the eligibility of members to be candidates for union office is subject, among other things, to such "reasonable" qualifications the members of the labor organization choose to embody in their constitution and bylaws, as long as such qualifications are uniformly imposed on all members.

The question of whether a particular qualification is reasonable is a matter which often is not susceptible of pre-

cise definition. For example, a qualification restricting eligibility for union office to members who meet a requirement involving attendance at a certain number of union meetings during a given period is not an unusual qualification. Ordinarily such a qualification would be a reasonable means of encouraging participation in the affairs of the union. However, there may be circumstances in which an attendance requirement would not be reasonable. For example, if members must work during the time when meetings are held, a requirement of attendance at a given number of meetings may be unreasonable in its application when there is not adequate provision for excused absences for members who are working at the time meetings are held.

Since we do not know your constituent's name or the name of his union, we were unable to examine the local's constitution and bylaws or the previous election complaint he filed with the Secretary. Generally, a provision requiring attendance at 50% of a union's meetings for a period of six months prior to nominations would not be considered by this Office to be unreasonable. However, if the work shifts are rotated in such a way as to make the effect of the provision one which would require more than 50% attendance during the six-month period, serious question would be raised as to the reasonableness of the rule.

As you can see, it would be impossible on the basis of the information contained in your constituent's letter to give you a definite opinion on whether the facts in his letter constitute a proper basis for action by the Secretary.

The Office of Labor-Management and Welfare-Pension Reports (LMWP) is charged with the administration and enforcement of certain sections of the LMRDA, including the election provisions of Title IV. Pursuant to section 402(a) of Title IV, a union member may request the Secretary of Labor to conduct an examination of his union's election procedures as applied in a particular election if, after the election occurred, he has exhausted all available internal union remedies provided for appealing

union election procedures or has invoked these remedies without receiving a final decision within three months. The Secretary may bring suit to have the challenged election set aside if, during his investigation of the member's complaint, he finds probable cause to believe a violation of Title IV of the Act has occurred and that the violation may have affected the outcome of the election.

I hope your constituent will find this information helpful. If he should desire any further assistance or information concerning the LMRDA, please advise him to feel free to contact our Atlanta Area Office which is located at Room 317, 1371 Peachtree Street, N.E., Atlanta, Georgia 30309. The telephone number is Area Code 404, 526-5351.

Sincerely yours,

SAMUEL V. MERRICK
Special Assistant for
Legislative Affairs

[Defendant's Exhibit Q]

Honorable Jacob K, Javits
United States Senate
Washington, D. C. 20510

December 5, 1966

Dear Senator Javits:

In reply to your inquiry relating to the letter which you received from Mr. Thomas McAdam I can advise you as follows:

Mr. McAdam filed his complaint with the Secretary of Labor on May 29, 1966, alleging violations of the Labor-Management Reporting and Disclosure Act in connection with the election of officers of Lodge 1085 of the Brotherhood of Railway Carmen of America.

The complaint was thoroughly investigated by the Office of Labor-Management and Welfare-Pension Reports; that Office found no violations of the law which may have affected the outcome of the election except in the following circumstances.

Section 401(e) of the Act provides that every member in good standing shall be eligible to be a candidate subject to "reasonable qualifications uniformly imposed." Mr. McAdam and most of the other union members were ineligible to be candidates because Section 26 of the constitution of this organization provides:

> "Any member who desires to be elected to any office in his lodge, must have attended a majority of the meetings of the Brotherhood Railway Carmen of America in the 12 months immediately preceding the month of election unless unable to attend for just and sufficient reasons. A member shall be required to advise the Recording Secretary in a written statement justifying his absence, and this to be done in the current month; a majority vote of the members in attendance at the meeting to determine acceptance or rejection of the offered excuse. A record of attendance and excuses for absence to be kept by the local lodge."

Although Mr. McAdam and other members working nights could have been excused from attending meetings, some of them sought to be excused.

The Department originally concluded that there was nothing patently unreasonable about this qualification on office holding, but that the rule was nevertheless of questionable validity because in operation only a few members of the local besides the incumbent officers had satisfied this attendance requirement. Consequently, civil action on behalf of the Secretary of Labor was filed on May 28, 1966 in the U. S. District Court for the Southern District of New York.

Subsequent to the institution of this action, a general review of attendance requirements as a qualification for office holding was held by the Secretary of Labor. Upon further consideration of this problem it was determined that measuring the reasonableness of a meeting attendance requirement solely in terms of the number of members adversely affected by its application in a particular election tended to unduly penalize the legitimate interest of a union in encouraging participation in the affairs of the union as well as obtaining candidates who have demonstrated an interest in, and arelikely to be concerned with, the problems of the organization. Upon reexamination, therefore, it was concluded that it would be less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office) as long as the requirement itself could be reasonably met by all members and was uniformly applied.

The question of whether a qualification on office holding is in itself reasonable is a matter which is not susceptible of precise definition. It cannot be said, however, that under all the circumstances, the meeting attendance requirement of Lodge 1085 imposes an unreasonable burden upon the union members. For this reason, the Department has determined to withdraw the case from court and will do so as soon as appropriate papers for this purpose are prepared.

Sincerely yours,

FRANK M. KLEILER
Director

Enclosure

[Defendant's Exhibit T]

Excerpts from U.S. Department of Labor,
LMRDA Interpretative Manual

ATTENDANCE AND PREVIOUS EXPERIENCE

422.205 ATTENDANCE AT 6 OF 12 UNION MEETINGS MAY BE REASONABLE

A provision requiring that to be eligible as a candidate for office a member must attend six out of twelve meetings during the year, if applied fairly and uniformly to all members, would not in ordinary circumstances, be an unreasonable qualification of the right to be a candidate for union office, within the meaning of section 401(e) of the Act.

422.206 12 OF 24 MEETINGS MAY BE REASONABLE

A provision requiring a member to have attended at least one-half of the regular meetings of his local union for 24 months previous to the election before he may be eligible to hold office, is not unreasonable if it is applied fairly and uniformly to all members.

It might well be unreasonable, however, in circumstances in which attendance presented an unusual degree of difficulty for a significant proportion of the membership; as for example, where the local had an extensive geographical jurisdiction.

422.208 75% ATTENDANCE REQUIREMENT HELD UNREASONABLE

In a suit by the Secretary of Labor to set aside a local union election, the court concluded that a provision of the local bylaws requiring attendance at 75% of the regular meetings of the local for a two year period since the last previous election in order to be eligible as a candidate for office is not a "reasonable" qualification within the meaning of section 401(e).

The cour concluded that the requirement of 75% attendance at union meetings was too high when combined

with a strict rule regarding excused absences which permitted a member to be excused only when he was required to work on the job while the meeting was ebing held. The court also stated that rule which, as in this case, limits the eligible group to 2.2% of the membership seems to be too harsh. *Wirtz* v. *Local 153, Glass Bottle Blowers* (U.S. D.C., W.D., Pa.), Aug. 28, 1965, 244 F. Supp. 745, 60 LRRM 2020, 52 L.C. 16,626.

422.250 PARTICIPATION IN UNION AFFAIRS

Qualifications reasonably designed to assure that candidates have participated in the affairs of the union and are sufficiently familiar with the industry in which the union operates, would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reasonableness of any of the qualifications they are not to be considered unreasonable in themselves.

[Defendant's Exhibit U]

December 11, 1962

Mr. James C. Paradise
General Counsel
Brewery Workers, AFL-CIO
2347 Vine Street
Cincinnati 19, Ohio

Dear Mr. Paradise:

This is in reply to your letter relative to the legality of a local union constitutional provision which would require candidates for office to be registered voters and to have voted in all elections, whether federal, state or local, which may have been held in the year preceding their nomination.

As you may know, section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959 provides that in any election required by the Act which is to be held by secret ballot, every member in good standing is eligible to be a candidate and to hold office, subject however, to the provisions of section 504(a), and to reasonable qualifications uniformly imposed. As pointed out in section 452.7 of our interpretative bulletin (copy enclosed) the question of whether a qualification is reasonable is a matter which is not susceptible to precise definition and in the final analysis will be determined by the courts. Generally speaking, we believe qualifications reasonably designed to assure that officers have established records of participation in the affairs of the unon or that they be familiar with the problems affecting the industry in which the union operates, would not be considered unreasonable under ordinary circumstances. We are of the opinion that a qualification which would require candidates for union office to be registered voters and to have voted in all public elections that may have been held during the year prior to their nomination is of sufficient relevance to the conduct of the union's affairs that it may be considered reasonable depending on its application n practice. However, it would be unreasonable, in our view, if

applied so as to bar a person's candidacy where his failure to meet the requirement was due to illness or other good cause, such as the absence of free access to the polls. Also, it would seem that proof of compliance with the requirement by persons desiring to run for office should be required only to the extent to which grounds for questioning complance may justify it. Of course, the fact that the qualification appears reasonable on its face would not be controlling if, as a matter of fact, it is used as a device for unreasonably restricting the number of candidates for office by application in a manner whch would be excessively burdensome and inharmonious with Title IV of the Act.

We trust this information will be helpful and regret that it has been necessary to delay our reply to you.

Sincerely yours,

John L. Holcombe
Commissioner

Enclosure

[Defendant's Exhibit V]

December 5, 1963

Mr. Frank W. Anulies
819 Tipton Street
Elkhart, Indiana

Dear Mr. Anulies:

This is in reply to your recent letter addressed to the Secretary of Labor, requesting an opinion regarding the reasonableness of the provision contained in section 85 of the Brotherhood of Railroad Trainmen's Constitution, which requires members to be "insurance members" in order to qualify as delegates to the National Convention. Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959 provides that in any election required by the Act which is to be held by secret ballot, every member in good standing is eligible to be a candidate and to hold office, subject, however, to the provisions of section 504(a) and to reasonable qualifications uniformly imposed. The question you raise, of course, is whether such a qualification is reasonable within the intent of the Act.

While the term reasonable qualification is not susceptible of precise definition, in our view a qualification which would require delegates to the National Convention to be "insurance members" is of sufficient relevance to the conduct of the union's affairs that it may be consdered reasonable under the provisions of the Act so long as its interpretation does not have the effect of depriving members of any real opportunity to satisfy the requirement. Rule 10(b) of the Rules Governing the Brotherhood of Railroad Trainmen's Insurance Department (page 205 DATConstitution 1960) sets out certain specified criteria for eligibility in the insurance program. There is no evidence that members are deprived of any real opportunity to meet the conditions specified. If the insurance program is generally available to all members and the rule requiring "insurance membership" as an election pre-

requisite s uniformly applied the qualification imposed would appear to be reasonable.

Accordingly, we not find the qualifications imposed by the constiution of the Brotherhood of Railroad Trainmen regarding the election of delegates to the National Convention are unreasonable.

We trust this information will be helpful to you. For your information, we are enclosing a copy of the Labor-Management Reporting and Disclosure Act of 1959 and several pamphlets concerning the Act. I regret we cannot be of further assistance in this matter.

Sincerely yours,

Frank M. Kleiler
Director

Enclosures

[Defendant's Exhibit W (rejected)]

Number of Candidates Appearing on Ballot for Five Principal Offices in Each of the Steelworker Union Elections [1] in Which the Secretary of Labor is Challenging Application of the Steelworker Constitution's Meeting Attendance Requirement

Local Union	Court in which case pending	President	Vice-President	Recording Secretary	Financial Secretary	Treasurer
1150	S.D. Ind.	4	3	4	4	4
1219	W.D. Pa.	2	2	2	2	2
1299	E.D. Mich.	2	2	2	2	2
1578	W.D. Pa.	2	2	1	2	2
1798	N.D. Cal.	2	1	1	2	2
2173	S.D. Ohio	2[2]	2	2	3	2
5724	S.D. Ohio	4	4	1	3	1
6799	C.D. Cal.	3	4	2	2	2

[1] All elections were held in 1967.

[2] Two candidates' names appeared on the ballot, but one of the two (the incumbent President) died a few hours before the polls opened.

[Defendant's Exhibit X (rejected)]

Number of Candidates Appearing on Ballot for Office of President in Last Local Union Election Held by Each Local Union With 500 or More Members in Steelworkers' District 38.[1] [2]

Table #1: Summary

No.	Locals	at	Which	6	Candidates	Were	on	Ballot:		1
"	"	"	"	5	"	"	"	"	:	3
"	"	"	"	4	"	"	"	"	:	2
"	"	"	"	3	"	"	"	"	:	16
"	"	"	"	2	"	"	"	"	:	15
"	"	"	"	1	"	"	"	"	:	10

[1] There is one Local Union in this category for which information could not be obtained by the time of trial: Local 338, which has approximately 2,000 members.

[2] District 38 encompasses the following states: California, Oregon, Washington, Idaho, Montana, Nevada, Utah, Arizona, New Mexico, Wyoming, N. Dakota, S. Dakota, Alaska and Hawaii.

Table #: Local-by-Local[3]

Union Local	Approximate Membership	Year of Election	No. Candidates on Ballot for President
1A	2,010	1967	3
16A	1,200	1968	2
25	800	1968	5
329	1,530	1967	2
330	500	1967	4
392	750	1967	2
485[4]	700	1969	3
551	930	1967	1
586	860	1967	2
616[5]	625	1968	1
937	850	1967	1
938	800	1967	1
1069	995	1967	1
1208[6]	1,180	1967	2
1304	1,050	1967	2
1414	680	1967	3
1440	2,600	1967	2
1502	940	1967	3
1549	900	1967	5
1684	825	1967	5
1845	1,670	1967	3
1981	2,550	1967	3
2018	5,000	1967	1

[3] Except as otherwise indicated, the source of information is a letter from the Recording Secretary of the Local Union involved.

[4] Source: Steelworker Staff Representative William Morrell (by telephone).

[5] Source: Steelworker Sub-District Director Orville Larson (by telephone).

[6] Source: Steelworker Sub-District Director Hugh Mathews (by telephone).

Table #2 (Continued):

Union Local	Approximate Membership	Year of Election	No. Candidates on Ballot for President
2058	1,210	1967	3
2102	5,660	1967	3
2701	3,500	1967	3
2869	6,800	1967	3
3010	500	1967	2
3029	750	1967	2
3267	610	1967	3
3367	585	1967	1
3677[7]	855	1967	1
3937	1,590	1967	4
4347	1,075	1967	2
4413	675	1967	2
467 0	1,000	1967	6
4856	855	1967	2
4997[8]	500	1967	1
5004[9]	1,000	1967	2
6002	1,300	1967	3
6163[10]	620	1967	2
6615	650	1967	3
6700	2,300	1967	3
6703	500	1967	2
6799	580	1967	3
7044[11]	1,000	1967	3
7100	610	1967	1

[7] Source: Steelworker Staff Representative George Sirolli (by telephone).

[8] Source: Steelworker Staff Representative Michael Curry (by telephone).

[9] Source: Steelworker Sub-District Director Joseph Angelo (by telegram).

[10] Source: Steelworker SubDistrict Director Hugh Mathews (by telephone).

[11] Source: Steelworker Staff Representative Linus Wampler (by telephone).

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 414343 429

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Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*:	
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In the Supreme Court of the United States

OCTOBER TERM, 1970

No.

JAMES D. HODGSON, SECRETARY OF LABOR, PETITIONER

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL–CIO, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the Secretary of Labor, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 19–26) is reported at 426 F. 2d 969. The opinion of the district court (App. C, *infra*, pp. 28–42) is unreported.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, p. 27) was entered on May 8, 1970. On July 30, 1970, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to and including

September 8, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in an action to set aside a union election pursuant to Title IV of the Labor-Management Reporting and Disclosure Act of 1959, the Secretary of Labor may allege only those violations of the Act which were protested internally by the complaining union member, or whether he may also allege additional violations disclosed by his investigation which he has given the union an opportunity to correct.

2. Whether a union rule restricting candidacy for local office to those members who have attended at least 50 percent of the local union meetings during the three-year period preceding nominations is a "reasonable qualification uniformly imposed" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, notwithstanding that (a) it renders nearly 90 percent of the membership ineligible to seek office, and (b) it imposes an unequal burden on members working on different shifts, and enables some members to qualify without attending any meetings at all by having their absences excused because of the performance of overtime work.

STATUTE INVOLVED

The relevant provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401, 402, are set forth in Appendix E, *infra*, pp. 45–47.

STATEMENT

This action was brought by the Secretary against respondent Local Union under title IV of the Labor-Management Reporting and Disclosure Act of 1959. The United Steelworkers of America (respondent "International Union") intervened as a party defendant.

The Local Union held a general election of officers on June 12, 1967. Nicholas Hantzis, an unsuccessful candidate for the office of president, protested the conduct of the election to the Local Union and then to the International Union. Among the matters protested internally by Hantzis was the use of union facilities to prepare campaign literature for the Local Union's incumbent president (App., *infra, p.* 39). After failing to obtain relief, Hantzis filed a complaint with the Secretary of Labor pursuant to Section 402(a) of the Act (29 U.S.C. 482(a)) (App., *infra,* pp. 39–40). The complaint again charged illegal use of union facilities and added a charge that an unreasonably restrictive meeting attendance requirement had been imposed as a condition of candidacy in the election (App., *infra,* p. 40).[1]

After investigating Hantzis' complaint, the Secretary, by letter dated November 21, 1967, notified both respondents of his findings that the meeting attendance requirement imposed as a condition of candidacy was not a reasonable qualification and had, moreover, not been uniformly imposed, and that union facilities

[1] In his internal protest, Hantzis did not challenge the meeting attendance requirement, but did complain of the manner in which it was applied. See *infra*, note 11, p. 17.

had been improperly used to promote the candidacy of the Local Union's incumbent president, in violation of Section 401 (e) and (g) of the Act (29 U.S.C. 481 (e) and (g)) (App. *infra*, p. 40). By letters dated November 22, 1967, December 26, 1967, and January 30, 1968, respondents agreed to extend the time within which suit might be filed to set aside the election until March 1, 1968, in order to permit the parties to attempt resolution of the issues involved without litigation. On December 18, 1967, and on January 30, 1968, representatives of the Secretary met with representatives of respondents and discussed the Secretary's findings (App., *infra*, p. 41). When respondents refused to undertake remedial measures, this action was filed on February 29, 1968. The Secretary's complaint alleged that an unreasonable meeting attendance qualification had been imposed upon the right of the Local Union's members to be candidates for office, and that such qualification had not been uniformly imposed, all in violation of Section 401(e) of the Act (29 U.S.C. 481(e)), and that union funds had been expended to promote the candidacy of the incumbent president, in violation of Section 401(g) of the Act (29 U.S.C. 481(g)).

During the relevant period, the Local Union had approximately 600 members (Tr. 28[2]; App., *infra*, p. 31), employed by the Howmet Corporation, Aerosystems Division, Loud Products (Tr. 26, 57). Approximately 400 employees worked the day shift, from 7 a.m. to 3:30 p.m. About 200 employees worked the

[2] "Tr." refers to the transcript of the trial in the district court. "R." refers to the record in the court of appeals.

swing shift, whose regular hours were 3:30 p.m. to midnight. The third shift, consisting of seven or eight employees, worked during the early morning hours. The Local Union held its monthly meetings in two sessions: one for the day shift, beginning at 7 p.m. on the second Monday of each month; and one for the swing shift, beginning at varying times between 12:30 and 1 a.m. on the second Tuesday of each month (App., *infra,* p. 31). Members employed on the swing shift frequently worked overtime until 1 or 2 a.m. (Tr. 238), and were credited with excused absences and counted as having attended the meeting when they worked past the scheduled starting time (Tr. 239–240). In January 1967, the starting time of the swing shift meeting sessions was changed to 1 p.m. (App., *infra,* p. 31). An average of 46 members attended each day shift meeting. Attendance at the swing shift meetings averaged 25 members from August 1965 to December 1966, and dropped to an average of 14 members after the change in starting time in January 1967 (App., *infra,* pp. 31–33).

The qualification which the Secretary sought to challenge, as set forth in the International Union's Constitution and its By-Laws for Local Unions, requires a candidate for local union office to have attended at least one-half of the regular meetings of his Local Union for 36 months previous to the election, "unless his Union activities or working hours prevented his attendance" (App., *infra,* p. 30).[3]

[3] Since respondent Local Union was not chartered until May 1965 (App., *infra,* p. 29), the 36-month period was not applicable. It was determined that in order to qualify as candidates in the June 1967 election, members would have to receive

Respondent Local Union's meeting attendance register showed that only 36 members had attended the required number of meetings (App., *infra*, p. 33). The district court estimated that an additional 24 of the 200 swing shift employees satisfied the requirement by reason of absences excused because of overtime work (App., *infra*, p. 33). At least one member who had not attended a single meeting during the critical period had sufficient credits for overtime work to qualify as a candidate (App., *infra*, p. 34). Four nominees for office were declared ineligible for failure to attend sufficient meetings (App., *infra*, p. 36). These members had attended five, six, seven and nine monthly meetings respectively.[4]

At the trial, an expert witness for the governnent testified that a study of the constitutions of 72 national and international unions including 90 percent of the country's total union membership showed that only twelve of these unions imposed a constitutional requirement of attendance at meetings as a qualification of candidacy for local offices, and that respondent

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credit for eleven of the 21 regular meetings held between August 1965 and April 1967 (App., *infra*, p. 31). Hantzis complained of the failure to include the May and June 1965 meetings in applying the requirement (R. 79).

[4] One of the disqualified nominees was erroneously declared ineligible, since he should have been credited with six excused absences for overtime work (App., *infra*, p. 36). One nominee, who had attended eight meetings, was permitted to be a candidate although he did not have sufficient credits for overtime work to qualify (App., *infra*, p. 37). These discrepancies were the basis of the Secretary's allegation that the qualification had not been uniformly applied (see *supra*, p. 3). The district court held that the alleged violations were "unintentional mistakes" (App. *infra*, p. 42).

International Union is one of only two unions specifying a meeting attendance requirement covering a period as long as three years (Tr. 305, 307–308). He also testified that, in his opinion, attendance at union meetings is not necessary to give members knowledge of the union's affairs, and that meeting attendance qualifications have not operated to increase attendance at union meetings (Tr. 325). Respondents introduced no contrary evidence, and presented no testimony to support their contention that members who attend union meetings are better qualified to serve as officers than those who do not.

The district court held that the use of union facilities to reproduce the campaign literature of the Local Union's incumbent president was a violation of Section 401(g), which "may have affected the outcome" of the election for the office of president, and ordered the union to conduct a new election for that office under the supervision of the Secretary (App., ~~*supra,*~~ p. 42). The district court also ruled that the Secretary could properly include in his complaint the charge that the meeting attendance qualification was unreasonable, since he had afforded respondents adequate notice and an opportunity to remedy the alleged violation before filing suit. The court held, however, that the meeting attendance requirement was not unreasonable (App., *infra,* pp. 41–42). The court found that the requirement was "designed to increase attendance at meetings and insure candidates who have demonstrated interest in union problems, are familiar with them, and better qualified to serve as officers of

INFRA

the union;" and that it was reasonable, "because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision" (App., *infra,* pp. 33–34).

The court of appeals affirmed. It held that the Secretary had no standing to challenge the reasonableness of the meeting attendance qualification since the requirement had not been challenged in the complaining member's internal union protest and "Congress intended to empower the Secretary to assert those violations that are fairly apparent from a member's protest to the union and no others" (App., *infra,* p. 22). The court of appeals, accordingly, found it unnecessary to consider whether the attendance requirement violated the Act.

REASONS FOR GRANTING THE WRIT

1. In *Wirtz* v. *Local Union No. 125, Laborers' International Union,* No. 1117, O.T., 1966, this Court was asked to determine whether the Secretary's power to institute an action to invalidate a union election is "limited to the particular allegation made by a complaining union member."[5] The specific issue presented in the *Laborers' International* case was whether the Secretary could challenge violations which allegedly had occurred during a union general election, even though the internal union complaint had involved only the runoff election held five weeks later. The Court granted certiorari, and unanimously held that the

[5] See, also, our petition for certiorari in *Wirtz* v. *Local Unions Nos. 9, 9–A, and 9–B, International Union of Operating Engineers,* No. 1116, O.T., 1966. That case became moot while the petition was pending. See 387 U.S. 96.

Secretary was entitled to challenge the general election because, on the facts of that case, the "union had fair notice from the violation charged by (the union member) in his protest of the runoff election that the same unlawful conduct probably occurred at the earlier election as well." 389 U.S. 477, 481. The Court explicitly found it unnecessary to consider in *Laborers' International* whether "a member's protest triggers a § 402 enforcement action in which the Secretary would be permitted to file suit challenging any violation of § 401 discovered in his investigation of the member's complaint." 389 U.S. at 482.

Although the precise question involved here was thus not decided in *Laborers' International,* the restrictive interpretation of the Secretary's authority adopted by the court below is inconsistent with the purpose of Title IV as articulated in this Court's opinion in *Laborers' International.* In rejecting the union's contention that the Secretary is limited to the allegations made in the union member's initial complaint, the Court pointed out that "neither the language of the statute nor its legislative history" supports such a restrictive view of the Secretary's role.

It is true, of course, that the Act authorizes the Secretary to step in only at the request of a union member who has exhausted internal union remedies. Section 402(a), *infra,* p. 46. This requirement is significantly different, however, from a statutory provision which requires exhaustion of the remedies of a governmental administrative agency or which vests primary jurisdiction over a dispute in such an agency. Such statutes are designed, in varying degrees, to assure a leading role for the expert agency in finding

the facts, interpreting the facts, initially construing the statute and, in general, contributing to uniformity in the administration of the law. To the extent that any of these purposes are to be served under the present Act, they are served by the Secretary's investigation and determination of whether to bring a lawsuit, rather than by the requirement that there must be a complaining union member who has exhausted internal union remedies. That requirement is designed merely to assure that the results of union elections will not be disturbed if they are satisfactory to all members of the union or if dissatisfaction with the results can be adequately alleviated through internal union remedies. Congress has, of course, not conferred any form of governmental authority over these disputes on the unions, whose officers tend to have an adversary interest in such disputes; and it is obvious that the various unions involved in such disputes, with their diversity of views and of internal remedies, could not be expected to play a role comparable to that of a single, expert administrative agency in promoting consistency in the Act's interpretation or administration.

Accordingly, the statute does not, in terms, limit the Secretary's investigation or his authority to institute suit to the violation alleged in the complaint. It empowers him to bring a civil action, after investigating the union member's complaint, "if he finds probable cause to believe that *a* violation of this title has occurred * * *" (Section 402(b), *infra*, pp. 46–47) (emphasis added). It is significant that the

statute is not limited to "the violation alleged" but is framed in terms which entitle the Secretary to proceed, after a protest has been made to the union and rejected, if he finds *any* violation to have occurred. This language was deliberately chosen by Congress. A bill Cong., 1st Sess., 105 Cong. Rec. 2067) provided that if the union member alleged a violation of the Act, the Secretary was to investigate "such allegation" and institute an action if he found "probable cause to believe such allegation is true." Moreover, Title IV rights—which are important guarantees of union democracy—are enforceable *solely* by the Secretary.[6] And as the Court noted in *Laborers' International,* "it is most improbable that Congress deliberately settled exclusive enforcement jurisdiction on the Secretary and granted him broad investigative powers to discharge his responsibilities, yet intended the shape of the enforcement action to be immutably fixed by the artfulness of a layman's complaint." 389 U.S. at 482. The Court also noted that

> [S]o to constrict the Secretary would be inconsistent with his vital role * * * in protecting the public interest bound up in Title IV. The Act was not designed merely to protect the right of a union member to run for a particular union office in a particular election. Title IV's special function in furthering the general goals of the LMRDA is to insure free and democratic union elections, the regulations of the union electoral

[6] Congress rejected proposed bills which would have made Title IV rights enforceable in a private suit. H.R. 8342, 86th Cong., 1st Sess., 105 Cong. Rec. 15887; S. 748, 86th Cong., 1st Sess., 105 Cong. Rec. 1276.

> process enacted in the Title having been regarded as necessary protections of the public interest as well as of the rights and interests of union members. [389 U.S. at 482–483.]

In view of the Secretary's "exclusive enforcement jurisdiction", his "broad investigative powers"[7] and his "vital role in protecting the public interest", we submit that it makes little sense to restrict the scope of the lawsuit brought by the Secretary to the four corners of the complaint originally made by the union member. As a number of courts have recognized, union members do not, as a rule, file carefully drafted complaints. *E.g., Wirtz* v. *Local Union 169, International Hod Carriers,* 246 F. Supp. 741 (D. Nev.). Consequently, if the complaint were the measure of the Secretary's powers, he would often be artificially limited, as here, by technical flaws in that document or by the individual member's failure to appreciate the full scope or consequences of the violation of which he is complaining. Such a limitation is plainly inconsistent with the Act's design to empower the Secretary to vindicate through the courts the public's right to democratically run unions, rather than merely to advance the private rights of the individual union members who might complain.

We believe that the Secretary's position in this case is entirely consistent with the limited purpose (see *supra,* p. 10) of the requirement in Section 402(a) that

[7] The investigation conducted by the Secretary is not limited by the subject matter or scope of the complaint received, or of the preceding internal union protest. *Wirtz* v. *Local 191, International Bro. of Teamsters,* 321 F. 2d 445 (C.A. 2); *Local 57, International Union of Operating Engineers* v. *Wirtz,* 346 F. 2d 552 (C.A. 1).

the union member exhaust his internal union remedies before the Secretary can step in.[8] Complaining union member Hantzis gave respondents full opportunity to remedy their violation of Section 401(g), the only violation Hantzis was aware of. Had the union provided a remedy to Hantzis' complaint, the Secretary would not have begun his investigation. Once that investigation was begun, however, there was no reason to require that the violations it revealed be channeled through another union member's complaint, particularly when, as here, the Secretary had given the union ample notice of the violations he had uncovered and opportunity to consider and resolve all of the alleged violations (see *supra*, pp. 3–4). As this Court pointed out in *Wirtz* v. *Local 153, Glass Bottle Blowers Association*, 389 U.S. 463, "Congress, although committed to minimal intervention, was obviously equally committed to making that intervention, once warranted, effective in carrying out the basic aim of Title IV." 389 U.S. at 473.[9]

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[8] See S. Rep. No. 187, 86th Cong., 1st Sess., p. 21.

[9] There are a number of district court decisions holding that the Secretary could not bring suit if the alleged illegality which was the basis of the suit had not been presented to the union for action prior to the initiation of suit. *E.g.*, *Wirtz* v. *Local Union 169, International Hod Carriers*, 246 F. Supp. 741 (D. Nev.); *Wirtz* v. *Local Unions No. 406, etc., Operating Engineers*, 254 F. Supp., 962 (E.D. La.); *Wirtz* v. *Local Union No. 450, etc., Operating Engineers*, 63 LRRM 2105, 54 Lab. Cas. ¶11,451 (S.D. Tex.). These cases did not hold, however, that the Secretary was barred from seeking effective relief merely because the full ramifications of the illegality were not specified in the internal complaint. They, in fact, allowed relief as to "every issue which the defendant union had a fair oppor-

We note, finally, that the issue in this case is of great importance to the administration of the election provisions of the Act. Most of the election suits under the Act to date have involved unreasonable restrictions on candidacy or other illegal practices which applied to most of the offices at stake in each election. And, as noted above, few union members file clear, precise complaints which specifically allege that the violation complained of affects all the contests in the election. Because of the time factors involved in this type of litigation, the Secretary realistically could not be expected to encourage a more comprehensive complaint by a union member to the union after discovering the full extent of the illegality. Thus, under the decision below, the Secretary would be effectively prevented from seeking complete relief in many cases where such relief would be warranted.

2. Because of its national importance in the administration of the Act, we urge this Court also to decide the substantive issue left unresolved by the court below: whether the meeting attendance qualification on candidacy applied in the challenged election is a "reasonable qualification uniformly imposed," as required by Section 401(e). This issue was decided by the dis-

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tunity to consider and resolve." *Wirtz* v. *Local Union 169*, *supra*, 246 F. Supp. 741, 752.

Our position, however, is that the Secretary may bring suit with respect to any violation he finds in the course of his investigation whether or not that violation is alleged in the complaint. This position has been upheld in *Wirtz* v. *Local 545, Operating Engineers*, 64 LRRM 2449 (N.D.N.Y.); *Wirtz* v. *Local 1377*, IBEW, 63 LRRM 2029, 54 Lab. Cas. ¶ 11,391 (N.D. Ohio). See also *infra*, note 10, p. 15.

trict court (see *supra*, pp. 7–8), and the record as to it is complete. The importance of the issue stems not only from the fact that the three-year meeting attendance requirement in the respondent International Union's constitution applies to more than three thousand local unions, but also from the basic misunderstanding reflected in the district court's decision of the principles governing the determination whether restrictions on candidacy for local union office are reasonable.[10]

In *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492, this Court held invalid a union bylaw which limited eligibility for certain major union offices to members who had served in one or more elective offices. The Court emphasized the congressional intent to keep union leadership responsive to the membership through the election process, and stated that "The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents." 391 U.S. at 499. "Given the objective of Title IV," the Court held, "a candidacy limitation which renders 93% of union members ineligible for office

[10] Two other district courts have followed the decision of the district court in the instant case, permitting the Secretary to challenge the validity of the rule even though it was not challenged in the union complaint, but upholding its reasonableness. *Shultz v. Local Union 1299, Steelworkers*, 73 LRRM 2673, 62 Lab. Cas. ¶ 10,720 (E.D. Mich.), and *Shultz v. Local 1150, Steelworkers* (S.D. Ind., Civ. Action No. IP 68–C–76, May 19, 1970).

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can hardly be a 'reasonable qualification.' " *Id.* at 502. *Id.* at 502.

We submit that the qualification imposed in the instant case is unreasonable under the standard set forth by this Court in the *Hotel Employees* case. Nearly 90 percent of the union members here were rendered ineligible by the meeting attendance rule, a fact which, in the absence of extraordinary circumstances, would seem to render the qualification invalid *per se*. Respondents' argument to the courts below—that the attendance requirement was designed to insure that candidates for union office are familiar with and interested in union problems—

> assumes that rank-and-file union members are unable to distinguish qualified from unqualified candidates for particular offices without a demonstration of a candidate's performance in [union affairs] * * *. But Congress' model of democratic elections was political elections in this country, and they are not based on any such assumption. Rather, in those elections the assumption is that voters will exercise common sense and judgment in casting their ballots. * * * [*Hotel Employees, supra,* 391 U.S. at 504.]

Moreover, here, as in *Hotel Employees,* the union "is not faithful to its own premise." 391 U.S. at 504. In *Hotel Employees,* a member could be *appointed* to any office without satisfying the prior office-holding requirement. In this case, a member could be eligible as a candidate without ever having attended a single meeting, provided that he was employed on the swing shift and was called upon to work overtime on a sufficient number of meeting nights. This aspect of

the application of the requirement, we believe, raises substantial doubt not only as to the qualification's reasonableness, but also as to whether it is, or can ever be, "uniformly imposed".[11]

The Court stated in *Hotel Employees* that "Congress plainly did not intend that the authorization in § 401(e) of 'reasonable qualifications uniformly imposed' should be given a broad reach." 391 U.S. at 499. This authorization, like exceptions to other remedial legislation, should be narrowly construed, and the burden of proof should rest upon the party asserting it. See, *e.g., Phillips Co.* v. *Walling,* 324 U.S. 490, 493; *Mitchell* v. *Kentucky Finance Co.,* 359 U.S. 290, 295. Respondents here failed not only to introduce evidence that union members become better qualified to hold union office by attending meetings, but also failed to rebut expert testimony in this record to the contrary. See *supra,* pp. 6–7. As in *Hotel Employees,* the respondent unions have failed to sustain their burden. Cf. 391 U.S. at 503.

[11] We also argued in the courts below that the qualification was not uniformly imposed in this particular election because one candidate was disqualified notwithstanding a combined record of meeting attendance and excused absences which satisfied the requirement, while another member was permitted to be a candidate although he did not satisfy the requirement, either by actual attendance at meetings or by a combination of attendance and excused absences. The district court found that these aberrations were the result of "honest, unintentional mistakes" (App., *infra,* p. 42). If certiorari is granted, we reserve the right to argue that these deviations from the rule, no matter how well-intended, constituted non-uniform imposition of the qualifications which warrants setting aside of the election.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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SEPTEMBER 1970.

APPENDIX A

United States Court of Appeals for the Ninth Circuit

Nos. 24759 and 24800

GEORGE P. SHULTZ, SEC. OF LABOR, PLAINTIFF-APPELLANT, CROSS-APPELLEE

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, ET AL., DEFENDANTS-APPELLEES, CROSS-APPELLANTS

Appeal from the United States District Court for the Central District of California

Before BARNES, KOELSCH and KILKENNY, Circuit Judges

KOELSCH, *Circuit Judge:* The Secretary of Labor brought this action in the district court pursuant to § 402(b) of the Labor Management Reporting and Disclosure Act against Local Union 6799, United Steelworkers of America, to secure judgment setting aside an election of officers and directing the Local to conduct a new election under supervision of the Secretary.

That section authorizes the Secretary to commence and prosecute such an action on timely complaint of a union member who has exhausted the available internal remedies afforded by the union whenever the Secretary, upon an investigation, finds probable cause to believe that the election was not in compliance

with section 401 of the Act; Section 402(c) empowers the court to order a new election if it finds the violation "may have affected the outcome of an election."[1]

The Secretary asserted three separate claims:

(1) that a rule of the International, applicable to all Locals, including Local 6799, prescribing qualifications for candidate eligibility, exceeded the permissible limits of provisions in Section 401(e) and tainted the whole election, thus requiring a complete new election for all officers;

(2) that the eligibility rule (even if valid) was not uniformly applied, as required by Section 401(e), to prospective candidates for the office of Financial Secretary, thus requiring a new election for that office;

(3) that the International had used union funds to

[1] Section 402 (29 U.S.C. 482) provides:

"(a) A member of a labor organization—(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 (section 401) of this title * * *

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization * * * to set aside the invalid election * * *

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds * * * (2) that the violation of section 481 (section 401) of this title may have affected the outcome of an election, the court shall declare the election * * * to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization * * *."

promote the candidacy of one of the candidates for the office of President in violation of Section 401(g), thus requiring a new election for that office.[2]

The district court allowed the International Union to intervene and, after a hearing, held the election invalid solely as to the office of president. Judgment was entered ordering a limited new election. The matter is here on the Secretary's appeal and the union's cross-appeal.

Appellees make a threshold objection to the consideration of the Secretary's appeal. They urge that the Secretary lacked standing to assert the two Section 401(e) claims upon which judgment went against him. Their contention, in substance, is: that Section 402 of the Act does not permit the Secretary to allege a particular violation of Section 401 in a suit to set aside an election unless a union member first unsuccessfully protests that violation to the union and that this statutory precondition was not met. The Secretary, although conceding that the union member's protest was silent as to any 401(e) violation, argues that this fact is immaterial; his position is that Section 402 imposes no such limitation but permits the Secretary to assert any violation of Section 401 disclosed by his own in-

[2] Section 401 (29 U.S.C. 481) provides:

"(e) In any election * * * a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject * * * to reasonable qualifications uniformly imposed). * * *

(g) No moneys received by any labor organization by way of dues, assessments, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for holding an election.

vestigation even though not so protested by the union member.[3]

The issue poses difficult problems and any answer is not entirely free of doubt; however, we are convinced and therefore conclude that Congress intended to empower the Secretary to assert those violations that are fairly apparent from a member's protest to the union and no others.[4]

Section 402 is ambiguous. Its exhaustion of remedies precondition logically suggests that the union must be afforded fair notice of the purported wrong and a reasonable time ["three calendar months" is the period designated in 402(a)(2)] to take corrective measures through its own internal machinery before complaint may be filed with the Secretary;[5] yet the section also provides that the complaint (to the Secretary) may allege "any" violation and the Secretary must bring a civil action to set aside the invalid election within sixty days after receiving the com-

[3] The sole member-protest of the election to either the local or international union was made by Nicholas Hantzis, a candidate for the office of president of the Local; his protest concerned an alleged diversion of union funds to defray expenses of Kenneth Rose, the incumbent president, in conducting his successful campaign for reelection. The Secretary acknowledged that this protest did not afford the unions "fair notice" that the union's candidacy eligibility requirement might be invalid or that it was not uniformly imposed; he further acknowledged that Hantzis made no demand on the union to act on those matters.

[4] Both parties rely on and quote extensively from *Wirtz* v. *Laborers Union*, 389 U.S. 477 (1968). But in that decision the Court declined to express an opinion on the subject, and was careful to so note.

[5] The Court's observation in *Wirtz* v. *Local 153, Glass Bottle Blowers Association of the United States and Canada*, 389 U.S. 463, 472 (1968) is relevant; "The stated commitment is to postpone governmental intervention until the union is afforded the opportunity to redress the violation."

plaint. To allow the Secretary wide ranging power to urge "any" violation would in effect nullify the exhaustion requirement; not only might the union be completely unaware of the asserted violation prior to the suit but, even if the Secretary gives notice before filing suit, the "three calendar months" period allowed for corrective action by the union would be rendered virtually meaningless. However, if the broad language appearing in the section is more narrowly construed, these inconsistencies disappear and the several provisions become harmonious.[6]

Moreover, we believe the background and legislative history of the Act also support our construction. As said in *Wirtz* v. *Local 153, Glass Bottle Blowers Association of the United States and Canada, AFL–CIO*, 389 U.S. 463, 470 (1968):

> Title IV's special function in furthering the overall goals of the LMRDA is to insure "free and democratic" elections. The legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs. The extensive and vigorous debate over Title IV manifested a conflict over the extent to which governmental intervention in this most crucial aspect of internal union affairs was necessary or desirable. In the end there emerged a "general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the

[6] Section 601 should also be noted. Although vesting the Secretary with broad powers to conduct, on his own initiative, investigations into union affairs, it does not authorize him to commence an action even if his investigation leads him to believe a union is violating the Act. He may only report the matter to interested persons. *Wirtz* v. *Laborers Union*, 389 U.S. 477, 482, f.n.5.

agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the courts." [7]

We turn to the union's appeal. The agreed facts fully justify the district court's finding of a union violation of Section 401(g) with respect to the election for the office of president. They disclose that the International donated materials, secretarial help and the use of its facilities to print advertising leaflets for Kenneth Rose, the Local's incumbent president, which Rose used in conducting his successful campaign for reelection.

The expense was undoubtedly "minimal," as appellees argue, but it nevertheless reflected the outlay of a sensible sum of union money. Indeed the International, shortly after the Secretary began his investigation and made known his interest in the matter, presented Rose a bill for $13.04, which he immediately paid.

The legislative history of the Act does not indicate that Congress intended to place a limit on the amount that a union might lawfully spend to aid a candidate for office or that it meant to encourage troublesome factual disputes over how much (or little) money constitutes a "de minimus" amount; and the

[7] Since we hold that an accommodation of the public interest and union autonomy can best be achieved by requiring a member to invoke a union's internal remedies before the Secretary can act, we deem it immaterial that in this case the Local had notice from the Secretary of the two asserted violations for more than ninety days before he commenced this action.

Neither are we persuaded by the Secretary's argument, that affirmance of the judgment ordering a new election for president under the supervision of the Secretary, requires a present judicial determination of the validity of the candidate-eligibility rule. If, as we concluded, the issue is not properly before the court, an opinion on that matter would be merely advisory.

language of the provision itself is clear and unambiguous. It provides in terms that "no moneys" of a union shall be spent to promote the candidacy of any person for union office.

Likewise unconvincing is appellees' argument that a union is not in violation unless it grants the request of one candidate for financial aid and rejects that of another. Granted that the object of the section is to prohibit discrimination between candidates and that this condition would not exist if a union contributed equally to all candidates for a particular office, the inference is plain that the unlikely probability of even handed union financial aid to several candidates, as well as financial aid to an individual candidate, is equally prohibited. Congress declared in the second of the two sentences comprising the provision that "Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates and other expenses necessary for the holding of an election."

We also approve, as not "clearly erroneous" the district court's companion finding that the violation "may have affected" the outcome of the presidential election. The financial aid was reflected in the form of three separate campaign dodgers or pamphlets; in all some 1200 were printed; obviously they were calculated to secure voter support for Rose. Although the record does not disclose the approximate number circulated and posted, it is clear that many were. Whether they produced the desired result is of course impossible to determine, but proof of that fact is not required. *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492, 505–8 (1968). However, it does appear that the number of dodgers was double that of the Local's membership and that Rose won

the election by a narrow margin. Thus it is not improbable that the financial aid "may have affected" the election.

The judgment is affirmed.

_____ _____,
_____ _____,
_____ _____,
United States Circuit Judges.

APPENDIX B

JUDGMENT

United States Court of Appeals for the Ninth Circuit

Nos. 24759 and 24800
Civil No. 68–326–EC

GEORGE P. SHULTZ, SEC. OF LABOR, PLAINTIFF-APPELLANT, CROSS-APPELLEE

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL–CIO, ET AL., DEFENDANTS-APPELLEES, CROSS-APPELLANTS

Appeal from the United States District Court for the Central District of California.

This cause came on to be heard on the transcript of record from the United States District Court for the Central District of California and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of said district court in this cause be, and hereby is affirmed.

Filed and Entered May 8, 1970.

A True Copy attest:

WILLIAM B. LUCK, *Clerk.*

APPENDIX C

United States District Court

Central District of California

Civil No. 68-326-EC

GEORGE P. SHULTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND UNITED STEELWORKERS OF AMERICA, AFL-CIO, DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause having come before this court for trial on March 25, March 26, and April 21, 1969, the plaintiff appearing through its counsel, Wm. Matthew Byrne, Jr., United States Attorney, Frederick M. Brosio, Jr., Assistant U.S. Attorney, Chief, Civil Division, and Dzintra I. Janavs, Assistant U.S. Attorney, by Dzintra I. Janavs and by Cornelius Donoghue, Attorney in the Department of Labor, and the defendants appearing by their counsel, Michael H. Gottesman, Arnold, Smith & Schwartz, by Jerome Smith, and Carl Frankel, the court having considered the evidence, both oral and written, and having read the written briefs and arguments, and being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. Defendant Local Union 6799 is, and at all times relevant herein, has been, an unincorporated association maintaining its principal offices at 103-1/2 East Holt Boulevard, City of Ontario, San Bernardino County, State of California, and has been a local labor organization engaged in an industry affecting commerce within the meaning of sections 3(i), 3(j) and 401(b) of the LMRDA (29 U.S.C. 402(i), 402(j) and 481(b)).

2. Said defendant is, and at all times relevant herein has been, chartered by and subordinate to defendant in intervention, the United Steelworkers of America, AFL–CIO, hereinafter referred to as the defendant International, an international labor organization engaged in an industry affecting commerce within the meaning of sections 3(i) and 3(j) of the LMRDA (29 U.S.C. 402(i) and 402(j)).

3. Defendant Local Union 6799 was chartered by the defendant International on May 27, 1965, and had approximately 578 members as of April, 1967.

4. Pursuant to Article VII, Section 5 of the intervening defendant International's Constitution defendant Local Union 6799 is deemed to have adopted, and did adopt, the Standard By-Laws for Local Unions, issued by the International.

5. Defendant Local Union 6799, at all relevant times, has been conducting its affairs under the aforesaid By-Laws (as republished January, 1967); the Constitutions of International Union, United Steelworkers of America, AFL–CIO (adopted September, 1964, and September 21, 1966) and the Local Union Elections Manual of the United Steelworkers of America (as amended to January 7, 1967). The election provisions of the aforesaid By-Laws, Constitutions and Elections Manual were, and are now,

subject to the provisions of Title IV of the LMRDA.

6. Article VII, Section 9, of the Constitution of International Union, as relevant, provides:

> No member shall be eligible for election as a Local Union Officer or Grievance Committeeman unless
>
> * * * * *
>
> (c) He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June, 1967, election, unless his Union activities or working hours prevented his attendance.

This requirement is applicable to 3,700 Local Unions in United Steelworkers of America.

7. Article IV, Section 5, of By-Laws for Local Unions, as relevant, provides:

> No member shall be eligible for election as an Officer or Grievance Committeeman unless
>
> * * * * *
>
> (c) He has attended at least one-half of the regular meetings of his Local Union for 36 months previous to the election, unless his Union activities or working hours prevented his attendance. Defendant took appropriate steps to notify members of this eligibility requirement.

8. On May 8, 1967, Frank S. McKee, a Staff Representative of the defendant International, sent the following telegram to I. W. Abel, President, United Steelworkers of America:

> Local Union 6799 District 38, was chartered May 27, 1965. Contract with H. W. Loud Co., of Pomona, Calif., signed July 15, 1965. First regular local union meeting scheduled and held in August, 1965. Several meetings were held between May 27, 1965, the date the local union received its charter and August of 1965. In order that this local union will be in compliance with Article VII, Section Nine of the International Constitution would you please

advise if the eligibility to hold a local union office began with the first regular local meeting held in August 1965 or would it be necessary to count the meetings held starting immediately after May 27, 1965.

9. On May 9, 1967, I. W. Abel replied:

REURTEL members of Local Union 6799 would have to have credit for one half the regular meetings held beginning August 1965 to meet the meeting attendance requirement.

10. Between August, 1965, and April, 1967, the employees of Howmet Corporation, Aerosystems Division, Loud Products, Pomona, California, worked three shifts. The regular hours for the approximately 400 day shift employees were 7:00 a.m. to 3:30 p.m. The regular hours for the approximately 200 swing-shift employees were 3:30 p.m. to 12:00 midnight, but a substantial number of the swing-shift employees frequently worked until 1:00 a.m. or 2:00 a.m. The third shift, consisting of about seven or eight persons, worked during the early morning hours.

11. Prior to January, 1967, defendant Local Union 6799 held one meeting each month conducted in two sessions: one for the day shift on the second Monday of each month, scheduled to begin at 7:00 p.m., and another for the swing-shift on the second Tuesday of each month, scheduled to begin in various months at varying times between 12:30 a.m. and 1:00 a.m. In January, 1967, swing-shift sessions were changed to 1:00 p.m., the second Tuesday of each month.

12. Twenty-one (21) regular monthly meetings were scheduled to be conducted by defendant Local Union 6799 between August, 1965, and April, 1967. The dates of these meetings, with the number of members attending each set forth in parentheses, were as follows:

August 30, 1965 (day shift), (51).
September 13, 1965 (day shift), (75).
October 11, 1965 (day shift), (58).
November 8, 1965 (day shift), (67).
December 13, 1965 (day shift), (49).
January 10, 1966 (day shift), (49).
February 14, 1966 (day shift), (38).
March 14, 1966 (day shift), (60).
April 11, 1966 (day shift), (44).
May 9, 1966 (day shift), (42).
June 13, 1966 (day shift), (53).
July 11, 1966 (day shift), (48).
August 8, 1966 (day shift), (43).
September 12, 1966 (day shift), (28).
October 10, 1966 (day shift), (36).
November 14, 1966 (day shift), (41).
December 12, 1966 (day shift), (25).
January 9, 1967 (day shift), (35).
February 13, 1967 (day shift), (19).
March 13, 1967 (day shift), (41).
April 10, 1967 (day shift), (55).
August 31, 1965 (swing shift), (44).
September 14, 1965 (swing shift), (36).
October 12, 1965 (swing shift), (17).
November 9, 1965 (swing shift), (53).
December 14, 1965 (swing shift), (19).
January 11, 1966 (swing shift), (30).
February 15, 1966 (swing shift), (24).
March 15, 1966 (swing shift), (23).
April 12, 1966 (swing shift), (22).
May 10, 1966 (swing shift), (25).
June 14, 1966 (swing shift), (28).
July 12, 1966 (swing shift), (31).
August 9, 1966 (swing shift), (20).
September 13, 1966 (swing shift), (18).
October 11, 1966 (swing shift), (25).

November 15, 1966 (swing shift), (5).
December 13, 1966 (swing shift), (10).
January 9, 1967 (swing shift), (13).
February 13, 1967 (swing shift), (17).
March 13, 1967 (swing shift), (11).
April 10, 1967 (swing shift), (14).

13. On May 8, 1967, defendant Local Union 6799 conducted two meetings for the purpose of nominating candidates for the June 12, 1967, election.

14. To be eligible as a candidate, a member had to a) be in continuous good standing from the time he joined Local Union 6799, b) be employed by H. W. Loud, Inc., and c) have attended 11 of the regular monthly meetings of defendant Local Union 6799 between August, 1965, and April, 1967. The only excuse provision actually applied in the June 12, 1967, election of Local Union 6799 was the defendants' work excuse provision. Since a substantial number of the approximately 200 swing-shift employees worked a nine-hour shift much of the time, it is estimated that at least 12% of the swing-shift qualified either through credits for overtime or by a combination of such credits and actual attendance. Since overtime for the day shift employees would not extend until or past 7:00 p.m., they could have attended the 7:00 p.m. meetings, and therefore the work excuse provision was not applicable as to them.

15. Only thirty-six (36) members of defendant Local Union 6799 actually attended at least 11 of the regular monthly meetings conducted between August, 1965 and April, 1967. Nine (9) of these were incumbent officers.

15a. The meeting attendance requirement is designed to increase attendance at meetings and insure candidates who have demonstrated interest in union problems, are familiar with them, and better quali-

fied to serve as officers of the union. It is a reasonable requirement, because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision.

16. The Election Committee as elected on May 8, 1967, to conduct the June 12, 1967 election, was composed of Otto K. Feenstra (Chairman), Kenneth Easin, Tribune C. Lio, Glenn Greenly, and Marvin Wright.

17. At the meetings conducted on May 8, 1967, 49 members were nominated as candidates, 22 of these declined nomination. Twenty-four met the eligibility requirements and three did not.

18. Marvin E. Wright, nominated as a candidate for the office of trustee, declined because he thought he did not satisfy the attendance requirement, because he had not attended any meetings and did not think he had sufficient overtime to qualify for sufficient credits. Mr. Wright testified that had he known that he had sufficient overtime credits, as in fact he did, he would not have declined the nomination. He testified also that prior to being on the Election Committee, he did not know where to check about possible overtime credits.

19. It was the responsibility of the Election Committee to determine whether the nominees met the eligibility requirements of the union. To determine whether nominees had attended or were entitled to be given credit for having attended at least 11 of the regular monthly meetings, the Election Committee first reviewed the attendance register of the defendant Local Union 6799, and tabulated the number of regular monthly meetings attended by each nominee. If the attendance register indicated that the nominee had attended 11 or more meetings, the Election Committee concluded that he was eligible. If the

attendance register did not show that the nominee had attended at least 11 meetings, the Election Committee requested foremen to review the Company's departmental overtime records to determine whether the nominee had been working up to or past the scheduled meeting starting time. If the total of meetings attended, according to the attendance register, and meetings excused because of working overtime totaled 11 or more, the Election Committee concluded that the nominee was eligible.

20. Each member of defendant Local Union 6799 had a dues check-off card, which he was required to show to the Outside Guard to be admitted to the regular monthly meetings. This card was punched before the member entered the meeting hall. The Election Committee decided, sometime after the nomination meetings of May 8, 1967, that this card would not be acceptable as proof of a candidate's having attended meetings, for the purpose of determining whether or not the candidate satisfied the union's attendance requirement, and that the only record acceptable for this purpose would be the Local's attendance register. The membership was advised of the above sometime after the nomination meeting.

21. The attendance register was a looseleaf binder and it was the responsibility of the Recording Secretary to place it at the entrance to the meeting room prior to the commencement of the meetings, to collect it at the conclusion, and to maintain it between meetings. Each member was supposed to sign it as he entered the meeting room and members were reminded on several occasions to do so. Two witnesses testified that they did not always sign this register, but sometimes had only their membership cards punched.

22. Neither defendant had any policy or instructions as to how much overtime a member had to have

worked on a particular meeting night to receive credit for having attended the meeting. After the nomination meetings of May 8, 1967, the Election Committee decided that anyone who worked up to or past the scheduled meeting time on a meeting night, would be entitled to credit.

23. The defendant Local Union 6799 did not maintain any records showing which members worked up to or past the scheduled meeting starting time. Company's departmental files, maintained for the purpose of equalizing overtime, however, show the time worked in hourly increments. These records do not have to be kept for any specific period of time, but some, covering the period involved in the election, were still in existence at the time of trial herein.

24. The Election Committee declared George Pruneri and Elmer G. Husman, candidates for the office of Trustee, Ray Mahan, candidate for the office of Treasurer, and Glenn Ross, candidate for the office of Financial Secretary, ineligible because they had neither attended 11 regular monthly membership meetings, nor had sufficient work excuses to receive credit for having attended a total of 11 meetings. According to the attendance register, Mr. Pruneri had attended five, Mr. Mahan had attended six, Mr. Husman had attended nine, and Mr. Ross had attended seven regular monthly meetings. Since Mr. Ross had worked 9-hour shifts on six other meeting nights, he was declared ineligible erroneously.

25. Although the Election Committee sent a letter to each of the four nominees found ineligible, advising them of said determination and giving them 10 days to question it, none contacted the Election Committee within that period. Elmer Husman did question the determination of the Election Committee after the election, presenting his punched member-

ship card as evidence of having attended sufficient meetings to qualify. Mr. Ross testified that although he really did not want to hold office and therefore did not question the Election Committee determination, he would have run had he not been declared ineligible, because too many people let George do it.

26. Defendant Local Union 6799 did not reopen nominations after the Election Committee had disqualified the four nominees as candidates.

27. Ed Poynter, who had attended eight regular monthly meetings between August, 1965, and April, 1967, and who was not entitled to sufficient credits for overtime work, was erroneously held eligible as a candidate for the office of Outside Guard.

28. The errors made by the Election Committee in holding Ross ineligible as a candidate and Poynter eligible, were honest, unintentional mistakes and did not affect the outcome.

29. The election was conducted on June 12, 1967, and the details are as follows:

President.—Don Redell, Ken Rose and Nick Hantzis were nominated as candidates for President. The election results were: Rose, 191 (elected); Hantzis, 147; Redell, 59.

Vice-President.—Mel Scruggs, George Hill, Loyd Cole, Hilton Willcox, Art Todd, Virgil Steele, and Ralph Bowman were nominated as candidates for Vice-President. Hill, Todd and Bowman declined the nomination. The election results were: Scruggs, 268 (elected); Cole, 47; Willcox, 45; Steele, 32.

Recording Secretary.—Ralph Bowman, Leonard Scandura and Tom Pipkin were nominated as candidates for Recording Secretary. Pipkin declined the nomination. The election results were: Bowman, 232 (elected); Scandura, 150.

Financial Secretary.—Glenn Ross, Ernie Crumpton and Otis Joiner were nominated as candidates for Financial Secretary. Ross was declared ineligible by the Election Committee. The election results were: Joiner, 203 (elected); Crumpton, 187.

Treasurer.—Bill Hurd, Tom Pipkin, Ray Mahan, Merry Wooten and Walt Farmer were nominated as candidates for Treasurer. Farmer declined the nomination, and Mahan was declared ineligible by the Election Committee. The election results were: Pipkin, 161 (elected); Hurd, 135; Wooten, 91.

Guide.—J. C. Scroggins, Walt Farmer, Floyd Gibson, Dan Rodriguez, Jack Cooper, Glenn Fulton, and Pete Schiavoni were nominated as candidates for Guide. Scroggins, Farmer, Rodriguez, Cooper and Schiavoni declined the nomination. The election results were: Gibson, 210 (elected); Fulton, 177.

Inside Guard.—Arnett James, Howard Reeves, George Ainsworth, J. C. Scroggins, Wally Blades, Clint Brown, and Orville Oertwig were nominated as candidates for Inside Guard. James, Ainsworth, Scroggins, Blades and Brown declined the nomination. The election results were: Reeves, 253 (elected); Oertwig, 125.

Outside Guard.—Ed Poynter, Jack Cooper, Wendell Williams, Clarence Thomas, and Gary Miller were nominated as candidates for Outside Guard. Cooper, Williams and Miller declined the nomination. Poynter and Thomas were declared eligible. The election results were: Thomas, 211 (elected); Poynter, 175.

Trustees.—The Constitution calls for the election of three trustees in each local. Eugene Houghton, Frederick Burpee, Elmer Husman, Marvin Wright, Walter Farmer, Jack Ingram, Merle Moore, Richard Mayer, and George Pruneri were nominated as candidates for Trustee. Wright, Farmer, Ingram and Moore declined

the nomination. Husman and Pruneri were declared ineligible by the Election Committee. The remaining three candidates were declared elected by the Election Committee without the need for a vote.

30. Subsequent to the June 12, 1967 election, defendant Local Union 6799 changed to only one session monthly membership meeting, held on Sunday when no members were working.

31. Defendant International Union did not advise any of the candidates that the International Union's facilities could be used to reproduce their campaign literature. Kenneth Rose, candidate for President, requested permission to use such facilities to reproduce campaign literature, and his request was granted. No candidate, other than Rose, made a similar request. Rose reproduced three different leaflets, and these were handed out at the plant's entrance gate on several occasions. A stack of leaflets was placed near the time clock. Altogether, about 1200 leaflets were prepared for Rose. Rose was billed on December 27, 1967, as follows:

2½ reams, legal size, colored 20 weight paper, at $3.90 per ream	$9.75
2 stencils, at 20 cents per stencil	.40
Secretarial services for 1 hour, at $2.89 per hour	2.89
Total	13.04

Rose paid the bill on December 28, 1967.

32. Nicholas Hantzis, a member of defendant Local Union 6799, protested the June 8, 1967 election of said Local at the July 10, 1967 regular swing-shift meeting, and again before the International Executive Board by a letter dated July 18, 1967. Hantzis did not challenge the reasonableness of the defendants' attendance requirement in either protest, but did complain, among other things, about the use of Union facilities to prepare campaign literature for presidential candidate, Ken Rose. In his complaint to the

plaintiff, dated October 11, 1967, Hantzis, whose protest had failed to obtain relief from the defendants, complained again about the use of union facilities for preparing Rose's campaign literature, and questioned also the reasonableness of the attendance requirement.

33. On November 21, 1967, a representative of the plaintiff wrote to I. W. Abel, president of defendant International (plaintiff's Exhibit 9), as relevant, as follows:

> The investigation thus far conducted established probable cause to believe that the election conducted by LU 6799 violated Title IV in the following particulars:
>
> * * * * *
>
> 2. Members were denied their right to vote for and otherwise support the candidates of their choice in that a candidate was declared ineligible who in fact did meet the candidacy requirements (401(e)).
>
> 3. A member was denied his right to be a candidate by reason of being improperly declared ineligible by the Election Committee (401(e)).
>
> 4. Members in good standing were denied the right to be candidates and to hold office (subject to Section 504 and to reasonable qualifications uniformly imposed) in the application of constitutional requirements which resulted in approximately 93.7% of the active membership being ruled ineligible (401(e)).
>
> * * * * *
>
> Money received by a labor organization by way of dues, assessments, or similar levy was used to promote the candidacy of the incumbent candidate for president in that material and equipment furnished by the International Union for the use of the International Staff Representative was utilized to reproduce campaign literature for the incumbent president (401(g)).

34. On December 18, 1967, representatives of the defendants met with representatives of the plaintiff. Among the matters discussed was the lawfulness of the meeting attendance requirement as a qualification of the right of defendant Local Union 6799's members to be candidates, the number of meetings for which Glenn Ross was entitled to receive credit because of his working hours, and the preparation of Ken Rose's campaign literature. On January 30, 1968, representatives of plaintiff and the defendants further discussed the lawfulness of the meeting attendance requirement as a qualification on the right of defendant Local Union 6799's members to be candidates for office in the June 12, 1967 election.

35. By letters dated November 22, 1967, December 26, 1967, and January 30, 1968, the defendants extended the time within which plaintiff could institute this action, and this action was ultimately filed on February 29, 1968.

CONCLUSIONS OF LAW

1. This court has jurisdiction of the subject matter and parties herein.

2. The Secretary of Labor may include in his complaint, filed pursuant to Section 402 of the LMRDA, violations disclosed by his investigation, even though said violations were not raised by the union member in his protests to the union, provided the Secretary gives the defendant union a reasonable opportunity to correct the violations, prior to filing suit. The defendants herein had adequate notice that the Secretary in his Complaint would question the reasonableness of their attendance requirement.

3. Although a two-year rule might be more reasonable, the three-year meeting attendance requirement of the defendants is not an unreasonable candidacy qualification under 401(e) of LMRDA.

4. Furthermore, the defendants' meeting attendance requirement as applied in the 1967 election of Local 6799 was not an unreasonable candidacy qualification under Section 401(e).

5. There was no violation of the requirement in Section 401(e) that qualifications be uniformly applied, by the wrongful qualification of Poynter and by the wrongful disqualification of Glenn Ross as candidates, because these were honest, unintentional mistakes on the part of the Election Committee, and because Mr. Ross failed to contest his disqualification prior to the election.

6. The monetary value of the union service or facilities provided for the preparation of a candidate's campaign literature is unimportant as regards violation of Section 401(g) of the LMRDA. Proof of any expenditure of union funds on behalf of a candidate establishes a violation of said section, and a prima facie case for the Secretary that the violation may have affected the outcome of the election.

7. The violation of Section 401(g) herein may have affected the outcome of the 1967 election of Local Union 6799 as to the office of the President.

8. The 1967 election of Local Union 6799 should, therefore, be set aside as regards the office of the President, and a new election for said office should be held, under the supervision of the plaintiff.

Dated: This 16th day of May 1969.

AVERY CRARY,
United States District Judge.

Presented by: Wm. Matthew Byrne, Jr., United States Attorney; Frederick M. Brosio, Jr., Assistant U.S. Attorney, Chief, Civil Division.

DZINTRA I. JANAVS,
Assistant U.S. Attorney,
Attorneys for Plaintiff.

APPENDIX D

United States District Court
Central District of California
Civil No. 68-326-E

GEORGE P. SHULTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND UNITED STEELWORKERS OF AMERICA, AFL-CIO, DEFENDANTS

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law made in this action,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The June 12, 1967 election of defendant Local Union 6799 for the office of President, be, and is, hereby set aside.

2. At a time to be agreed to by the parties to this action, the defendant Local Union 6799 will hold a new election for the office of President. Plaintiff will supervise the nomination, election and run-off election, if any, for said office, in accordance with Section 402(c) of LMRDA.

3. The Court will retain jurisdiction of this matter, and after the aforesaid new election (and run-off election, if any) for the office of President, upon certification to the court by the Secretary of Labor, of the

name of the person so elected, the Court will, as provided in Section 402(c) of LMRDA, enter a decree declaring such person to be the President of the defendant Local Union 6799.

Dated: This 16th day of May 1969.

AVERY CRARY,
United States District Judge.

Presented by Wm. Matthew Byrne, Jr., United States Attorney; Frederick M. Brosio, Jr., Assistant U.S. Attorney, Chief, Civil Division.

DZINTRA I. JANAVS,
Assistant U.S. Attorney,
Attorneys for Plaintiff.

APPENDIX E

STATUTES INVOLVED

The Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*, provides in pertinent part:

TITLE IV. ELECTIONS

TERMS OF OFFICE; ELECTION PROCEDURES

* * * * *

SEC. 401. (b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

* * * * *

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by

members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

* * * * *

ENFORCEMENT

SEC. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body or,

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation.

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor

organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

U.S. GOVERNMENT PRINTING OFFICE: 1976

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IN THE

Supreme Court of the United States

October Term, 1970

No. ————

JAMES D. HODGSON, Secretary of Labor, *Petitioner*,
v.
LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, *et al*, *Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STEELWORKERS OF AMERICA, AFL-CIO, IN OPPOSITION

INTRODUCTION

The instant petition for a writ of certiorari filed by the Solicitor General, on behalf of the Secretary of Labor, does not in our judgment accurately describe the nature of the questions presented or the relevant facts which give rise to such questions. In addition, many of the relevant facts are omitted altogether. Precisely because of these serious shortcomings in the Secretary's Statement, we deem it necessary to set forth below in detail our position concerning these same subjects.

Counter-Statement of the Questions Presented

1. Whether the Secretary of Labor[1] may raise issues in an action under Title IV of the Labor Management Re-

[1] Hereinafter, "the Secretary".

porting and Disclosure Act of 1959 (29 U.S.C. 401)[2] which were not raised by any member in the union's internal protest procedure and are not germane to the protest actually filed.

2. Whether the union's rule requiring that a candidate for local union office have attended half (½) the regular monthly meetings in the twenty-one (21) months immediately preceding nominations is a "reasonable qualification" for candidacy, where attendance is not difficult for any member and the rule does not in practice preclude contests for union office.

Counter-Statement of the Case

A. The Failure to Protest the Reasonableness of the Meeting Attendance Rule in the Union's Internal Election Procedure.

The thrust of the Secretary's petition is devoted to exposing the alleged error in the opinion of the court below[3] holding that in the instant circumstances the Secretary lacked standing to challenge the validity of the union's meeting attendance rule. To insure that this Court can assess the Secretary's legal arguments in light of an accurate and relevant factual recitation, we feel constrained to set out this comprehensive counter-statement below.

Local Union 6799 (hereinafter "the Local") is and at all pertinent times has been chartered by and subordinate to the United Steelworkers of America, an international labor organization (hereinafter "the Union"). The Local conducts all its affairs pursuant to the Constitution of the International Union, the Local Union Elections Manual of the International Union, and the Standard By-Laws for Local

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[2] The relevant portions of this statute are set forth in Appendix E to the Secretary's petition for a writ of certiorari at pp. 45-47.

[3] The entire opinion is printed in Appendix A to the petition (pp. 19-26).

Unions issued by the International Union (Appendix C of the petition at p. 29).

The election challenged in this lawsuit was conducted by the Local on June 12, 1967 (*id.* at p. 37). It was a general election for all major local union offices.[4] The Union's Constitution establishes a detailed procedure which provides a member the right to file an election protest if he believes the election was improperly conducted for any reason. Under this procedure the protest must initially be raised before the Local Union and is ultimately resolved by the Union's International Executive Board. (Pl. Exh. 2, p. 22.)

The only member who challenged the Local's 1967 election was Nicholas Hantzis, an unsuccessful candidate for President[5] (Pl. Exh. 1, p. 15; Appendix A to the petition, p. 22, n. 3). At the Local Union's July 10, 1967 meeting, and in his subsequent written appeal to the Union's International Executive Board (dated July 18, 1967) Hantzis protested about a number of matters, including the charge that the Local Union stencilled and mimeographed campaign material for one of his opponents, Brother Rose. It is clear, however, that at neither stage in the internal union procedure did Hantzis' protest attack the reasonableness of the Union's meeting attendance rule; nor did it allege that the rule was applied in a non-uniform manner. (Appendix C to the petition at p. 39). This is not surprising since Hantzis did, in fact, satisfy the requirements of the rule.

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[4] Elections were held for the following offices: President, Vice-President, Recording Secretary, Financial Secretary, Treasurer, Guide, Inside Guard, Outside Guard and Three (3) Trustees (Appendix C of the petition at pp. 37-38). All "Tr." references are to the transcript of the trial in the district court. "R" refers to the record in the court of appeals and all "Exh." references are to the exhibits in the trial before the district court.

[5] In the election for President, Rose was elected; he received 191 votes as compared with 147 votes for Hantzis and 59 for Redell (*id.* at pp. 37-39). There were approximately 578 members in the Local Union as of April 1, 1967 (Tr. 28).

Indeed, the Secretary has expressly acknowledged in his answers to defendant's Interrogatories that Hantzis' protest did *not* afford the Union "fair notice" of these matters, nor did it "call upon defendants to correct any or all of the [se] matters." (R. 25). The matters which *were* raised in the Hantzis protest were decided adversely to him by the International Executive Board, thus exhausting Hantzis' abortive efforts to obtain recourse through the internal election protest machinery.

Thereafter, on October 11, 1967, Hantzis filed a complaint with the Secretary pursuant to Section 402(a) of the Act. In it, he complained once again about the use of Union facilities for preparing Rose's campaign literature and also questioned, for the first time, the reasonableness of the Union's meeting attendance requirement and the manner in which the rule was applied. (Appendix C to the petition at pp. 39-40). See Section 401(e) and (g) of the Act (29 U.S.C. 481(e) and (g)).

In the course of investigating this complaint, the Secretary became interested in all three issues. Approximately one-half year after the election, but prior to instituting this action, representatives of the Secretary discussed all these issues with legal counsel for the Union (*id.* at p. 41; Pl. Exh. 1, pp. 15-16). This was, to repeat, the *first time* that either the question concerning the reasonableness of the meeting attendance rule or its application was called to the Union's attention.

Precisely because of the belated injection of the meeting attendance issue, the Union took the position that the Secretary lacked standing to attack the meeting attendance rule in the instant suit filed under Section 402 of the Act.

The court below agreed. Faced with the task of achieving a delicate balance between two potentially conflicting objectives of the statute (i.e. a desire not to hamstring the Secretary's investigative powers and enforcement jurisdiction while simultaneously not rendering the exhaustion re-

quirement a nullify), the court defined the controlling legal standard as follows:

> ". . . Congress intended to empower the Secretary to assert [in a Section 402 action] those violations that are *fairly apparent from a member's protest to the union and no others*" (Emphasis added) (Appendix A to the petition at p. 22).

Applied to the instant facts, the court held that the Secretary lacked standing to sue on the meeting attendance rule since by his own acknowledgment the Hantzis protest did not by any stretch of the imagination afford the Union "fair notice" of this issue. (Appendix A to the petition at p. 21).

B. The Merits of the Union's Meeting Attendance Rule.

Insofar as the merits of the Union's rule is concerned, the Secretary's Statement of Facts is grossly inadequate. In summary form we shall explicate those additional relevant and undisputed facts which warrant this Court's attention. First, the Constitution of the Steelworkers International Union, which is applicable to each of its 3,700 local unions, requires that to be eligible for candidacy for elected office a member must have attended half the regular monthly meetings of the local union during the thirty-six (36) months preceding the election, with credit given for meetings the member could not attend because of his union activities or working hours (*id.* at p. 30).[6] Actually, however, because the Local Union was not formed until 1965, it held only 21 regular meetings prior to the June 1967 election, so that the effect of the rule at this Local was to require attendance (or credit) at only eleven (11) meetings (Pl. Exh. 1, p. 3).

Second, the regular monthly meetings only lasted approximately two (2) hours (Tr. 281) and attendance was not difficult for any member; all of the Local's members

[6] The term of office for each local union official so elected is three (3) years.

work at one plant[7] and the Union meeting hall is just a fifteen (15) minute automobile drive from the plant (Pl. Exh. 1, pp. 5-6).

Third, at the Local's May 1967 nomination meeting, 49 members were nominated as candidates for the elective offices; 22 of these declined nominations. Of the remaining 27 nominees, all but 3[8] satisfied the meeting attendance rule (Appendix C to the petition at p. 34) and appeared on the ballot as candidates. The net result was that each of the incumbent officers was challenged by one or more opponents who satisfied the meeting attendance requirement (*id.* at pp. 37-39). This is illustrative of the more general pattern which exists in Steelworker local union elections conducted throughout the country.[9] Stated otherwise, the record is devoid of any evidence that the rule operates to perpetuate incumbents.

Fourth, Constitutions of International Unions having 25% of all of America's union members impose meeting attendance requirements as a candidacy qualification for

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[7] All of the Local's members are employed at the Pomona, California plant of Land Division, Howmet Corporation (Tr. 26, 57).

[8] Cf. the Secretary's petition at p. 6.

[9] At trial, defendants offered two (2) exhibits designed to establish that at other Steelworkers' locals, the meeting attendance rule likewise did not preclude contests for union office (Tr. 415-418). Thus, Def. Exh. X showed the number of candidates who qualified and ran for President in each local union with 500 or more members within District 38 of the Steelworkers, which comprises our membership in the 14 Western States. Further, Def. Exh. W showed the number of candidates who qualified and ran for the five principal offices in each of the local unions whom the Secretary has sued on the identical ground that its meeting attendance rule is an unreasonable qualification within the meaning of Section 401 (e) of the Act.

The district court (per Crary, J) rejected these exhibits as irrelevant upon the Secretary's concession that there was no claim in this case that the rule precluded contests against incumbents (Tr. 418, 421).

local union office, and in all probability a much larger percentage of local unions have such a requirement.[10]

Fifth, the meeting attendance rule is designed to accomplish numerous legitimate union purposes, including the desire to increase attendance at meetings, to attempt to insure that candidates have demonstrated an interest in the union's problems and are familiar and better able to cope with the complexities and responsibilities attendant to holding office (Appendix C to the petition at pp. 33-34), and to attempt to insure that there is a check upon the unbridled control of the local's affairs by the incumbent officers between elections.

Finally, the Secretary has recognized the basic principle that meeting attendance requirements are "a reasonable means of encouraging participation in the affairs of the union" (Def. Exh. N, O, P, Q). The Secretary has published an Interpretative Manual announcing to the general public what he considers to be the proper interpretation of the statute which he is empowered to administer and enforce. Paragraph 422.250 of the Manual (Def. Exh. T), captioned "Participation in Union Affairs," states a general principle that, absent unusual circumstances, an eligibility rule designed to assure participation in and familiarity with union affairs is a reasonable candidacy qualification:

> "Qualifications reasonably designed to assure that candidates have participated in the affairs of the union

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[10] The 25% figure was derived from a survey of International Union Constitutions made by the Secretary's Director of Research (Tr. 305, 307). An additional 7% of union members are in unions whose International Union Constitutions expressly leave the matter to local union option (*ibid.*), and the Director of Research testified that some local unions in these Internationals have adopted meeting attendance requirements in their *local union* constitutions and by-laws (Tr. 310). There are 45,000 local unions in the United States (Tr. 311), and the Secretary has made no effort to determine how many have meeting attendance requirements in their constitutions and by-laws (Tr. 310-311).

and are sufficiently familiar with the industry in which the union operates, would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reasonableness of any of the qualifications, they are not to be considered unreasonable in themselves." [11]

As one specific application of this principle, the Manual declares that a requirement of 50% meeting attendance over a 24 month period (which is *greater* than the 21 month period involved in the instant case) is a reasonable candidacy qualification, except where attending presents "an unusual degree of difficulty for a significant proportion of the membership; as for example, where the local had an extensive geographical jurisdiction." (Manual par. 422.206 Def. Exh. T).[12] At trial, the Chief of the Secretary's Elections Unit conceded that this exception for difficulty in attending is not applicable to the instant case.[13]

All three of the district courts [14] which have ruled on the

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[11] In light of the foregoing we find it totally disingenuous for the Secretary *now* to attempt to rely (see petition at pp. 6-7) on testimony of one of his own representatives to support a contrary position—namely, that the union's rule does not serve the intended purpose. The union "presented no testimony to support the contention that members who attend union meetings are better qualified to serve as officers . . ." (petition at p. 7) precisely because the Secretary's own interpretive rulings were predicated on the validity of this "contention".

[12] The Manual is silent as to the validity of a 50% meeting attendance requirement spanning 36 months, the period applicable to Steelworkers' local unions which, unlike Local 6799, are not newly formed.

[13] The Manual distinguishes 75% meeting attendance requirements which, it notes, have been judicially declared "unreasonable" absent extremely liberal excuse provisions for non-attendance. (Manual, par. 422.208 (Def. Exh. T).

[14] In addition to the district court decision in the instant case, see also *Shultz* v. *Local Union 1299, Steelworkers,* 73 LRRM 2673, 62 Lab. Cas. ¶ 10,720 (E.D. Mich.), and *Shultz* v. *Local 1150, Steelworkers* (S.D. Ind., Civ. Action No. —, IP 68 C-76, (May 19, 1970).

Steelworkers' meeting attendance requirement have concluded that it is not unreasonable and, in so doing, dismissed the suits filed by the Secretary alleging violations of Section 401(e) of the Act. Significantly, as shown above, the courts, in reaching this conclusion, were actually agreeing with the precise principles which the Secretary has previously enunciated as the proper interpretation of the Act but which he *now* seeks to discredit.

ARGUMENT

1. There is no compelling reason to grant the writ on the procedural question presented by the Secretary.

In *Wirtz* v. *Local Union No. 125, Laborers' International Union,* 389 U.S. 477 (1968), this Court was invited, but expressly declined, to decide "the merits of the Secretary's argument that a member's protest triggers a §402 enforcement action in which the Secretary would be permitted to file suit challenging *any* violation of §401 discovered in his investigation of the member's complaint." (*Id.* at 482) (Emphasis added.) In the instant action, once again, the Secretary places almost exclusive reliance (see petition at p. 14, n. 9) on the same argument in support of his efforts to obtain a writ as was made in *Laborers' International.* There is no more reason for this Court to decide that legal issue *now* than existed when *Laborers' International* was decided. The court below is the lone Court of Appeals to have passed upon the Secretary's argument. Unless and until there develops a conflict among the Courts of Appeals, the need for review by this Court is not apparent.

In any event, as we now show, the decision below is plainly correct, and does not warrant review. The court below resolved the procedural question in a sound and proper manner which comports with the legislative purpose.

Section 402 of the Act, 29 U.S.C. §482, provides in pertinent part:

"(a) A member of a labor organization—

(1) *who has exhausted the remedies available* under the constitution and by-laws of such organization and of any parent body or, (2) *who has invoked such available remedies* without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of Section 401 . . .

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such action, bring a civil action against the labor organization . . ." (Emphasis added.)

Upon analysis of the quoted statutory language and the underlying legislative history, the court below held that the *only* way these provisions could be read as a harmonious whole was to conclude "that Congress intended to empower the Secretary to assert those violations that are fairly apparent from a member's protest to the union and no others" (see Appendix A to the petition at p. 22). That conclusion, in the court's view, maintains the delicate balance between the dual Congressional objectives of according the Secretary substantial enforcement powers and preserving union self-government.

The reasoning of the court below, in pertinent part, was as follows:

"Section 402 is ambiguous. Its exhaustion of remedies precondition logically suggests that the union must be afforded fair notice of the purported wrong and a reasonable time ["three calendar months" is the period designated in 402(a)(2)] to take corrective measures through its own internal machinery before complaint

may be filed with the Secretary; yet the section also provides that the complaint (to the Secretary) may allege *"any"* violation and the Secretary must bring a civil action to set aside the invalid election within sixty days after receiving the complaint. To allow the Secretary wide ranging power to urge "any" violation *would in effect nullify the exhaustion requirement;* not only might the union be completely unaware of the asserted violation prior to the suit but, even if the Secretary gives notice before filing suit, the "three calendar months" period allowed for corrective action by the union would be rendered virtually meaningless. However, if the broad language appearing in the section is more narrowly construed, these inconsistencies disappear and the several provisions become harmonious." (See Appendix A to the petition at pp. 22-23).

In his petition, the Secretary places heavy reliance on his "broad investigative powers," his "exclusive enforcement jurisdiction," and "his vital role in protecting the public," [15] to support the far reaching argument that once having conducted his investigation there are *absolutely no limits* to the §401 violations he can assert in a §402 suit. The simple answer is, as the court below aptly pointed out, that to achieve this result the Secretary would have us read the exhaustion principle out of the statute, contrary to the express legislative intent.

One of Congress' main concerns in adopting the Act was to give full play to internal union appeals procedures in the resolution of election disputes, and to inject the Secretary and the courts only where those internal mechanisms proved incapable or unwilling to resolve these disputes. As this Court stated in *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n.* 389 U.S. 463, 472-473 (1968): "Congress has explicitly told us that these provisions were designed to pre-

[15] See the Secretary's petition at p. 12.

serve 'a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections.' S. Rep. No. 187, 86th Cong., 1st Sess. 21, 1 Leg. Hist. 417."

The Senate Report expressed the "general approach of the bill" thusly:

> "A strong independent labor movement is a vital part of American institutions. . . . The overwhelming majority [of unions] are honestly and democratically run. *In providing remedies for existing evils the Senate should be careful [not] to undermine self-government within the labor movement.* . . .
>
> "In acting on this bill the committee followed three principles:
>
> "1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. (Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government. . . .") (S. Rep. No. 187, 86th Cong. 1st Sess. (1959), pp. 5, 7; emphasis ours.)[16]

Significantly, as described above, this "general approach," which the Secretary now seeks to render meaningless, was carried forward into Section 402 of the Act. See also, S. Rep. No. 187, 86th Cong., 1st Sess. (1959), p. 31.

Consistent with the foregoing, it is obvious that if a member does not pursue his internal union remedies *at all*, the Secretary cannot thereafter institute suit. *Wirtz* v. *Local Union No. 125, Laborers' International Union, supra,* 389

[16] See *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n., supra,* 389 U.S. at 471, n. 10.

U.S. at 482, n. 15.[17] Logic dictates a similar result where, as here, a member pursues his internal union remedies as to one issue but the Secretary thereafter files suit to set aside the election on a wholly different issue.

In addition to the Ninth Circuit's instant decision, the district courts have almost uniformly rejected the Secretary's claim that he has roving jurisdiction to attack aspects of a union election completely unrelated to members' internal union protest. Instead, they have ruled that the Secretary may sue only with respect to matters which the union had a fair opportunity to consider and redress in connection with the member's own protest to the union. See, *Wirtz* v. *Local 257, Glass Bottle Blowers,* 273 F. Supp. 746 (D. N.J. 1967); *Wirtz* v. *Local 174, American Federation of Musicians,* 272 F. Supp. 294 (D. La. 1967); *Wirtz* v. *Local Union No. 450,* 63 LRRM 2105, 54 Lab. Cas. ¶ 11,450 (S.D. Tex. 1966); *Wirtz* v. *Local Union No. 406,* 254 F. Supp. 963 (E. D. La. 1966); *Wirtz* v. *Local Union 169,* 246 F. Supp. 741, 60 LRRM 2540 (D. Nev. 1965).[18]

Indeed, in *Laborers' International,* upon which the Secretary mistakenly places major reliance (petition pp. 8-11), this Court's opinion strongly suggests a disposition to reach the same result. Thus, the Court there stated that on the facts before it the member's internal union protest afforded the union "fair notice" of the matter about which the Secretary ultimately sued, 389 U. S. at 481, and it added:

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[17] Section 601 (29 U.S.C. §521) bestows upon the Secretary broad investigatory powers even absent a member's complaint. However, in such circumstances the Secretary cannot initiate a §402 action irrespective of what violations his investigation discloses; his remedy is limited to disclosure of such violations to the interested parties.

[18] The Secretary's petition (p. 14, n. 19) cites only two cases to the contrary and it is not at all clear that one of those (*Wirtz* v. *Local 1377, IBEW,* 63 LRRM 2029, 54 Lab. Cas. ¶ 11,391 (N.D. Ohio)) actually supports the broad interpretation championed by the Secretary.

"It is true that *the exhaustion requirement was regarded by Congress as critical to the statute's objective of fostering union self-government.* By channeling members through the internal appellate processes, Congress hoped to accustom members to utilizing the remedies made available within their own organization; at the same time, however, unions were expected to provide responsible and responsive procedures for investigating and redressing members' election grievances. *These intertwined objectives are not disserved but furthered by permitting the Secretary to include in his complaint at least any §401 violation he has discovered which the union had a fair opportunity to consider and redress in connection with a member's initial complaint.*

". . . In default of respondent's action on a violation *which it had a fair opportunity to consider and resolve in connection with [the member's] protest,* the Secretary was entitled to seek relief from the court. . . ." (389 U.S. at 484, 485, emphasis added).

In sum, the "fair notice" standard enunciated by this Court in *Laborers' International,* and adopted by the court below, strikes an appropriate balance between the dual Congressional objectives of fostering union self-government and according the Secretary substantial and meaningful enforcement powers.

It is likewise evident that the court below properly applied the "fair notice" standard in the instant factual context. Here, unlike *Laborers' International,* the Secretary concedes that the internal union protest afforded the Union neither fair notice of the matters ultimately raised in his lawsuit nor a fair opportunity to consider and redress such matters. Simply put, it is hard to conceive of issues more disparate than those raised by Hantzis' protest (re the conduct of the election itself) and the Secretary's contentions which were dismissed by the court below (re the eligibility requirement for candidacy).

The Secretary's remaining arguments have little force. In urging that "it makes little sense to restrict the scope of the lawsuit brought by the Secretary to the four corners of the complaint originally made by the union member" (petition at p. 12), the Secretary is just raising a strawman. Of course, union members are laymen and their written protests should be construed liberally. As such neither the Union's position nor the opinion of the court below disputed the self-evident fact that it would be grossly unfair and supertechnical to artificially limit the Secretary's enforcement powers merely because the members' protest was inartfully worded. But this is of no relevance whatsoever here. As we have explained in detail above, the extreme variance between the Secretary's complaint and the protest filed by Hantzis with the Union is one of *substance* and not merely a matter of form, style or language.

Finally, the Secretary's argument is likewise unpersuasive insofar as he attempts to demonstrate (petition p. 13) that his pre-litigation notice to the Union accorded it a "fair opportunity" to resolve the alleged violations arising out of the meeting attendance requirement. This contention, as the court below held, is spurious.[19] The Secretary always notifies the Union before instituting suit; accordingly if this argument were to prevail it would mean that the Secretary could nullify the exhaustion requirement of the statute through the simple expedient of sending a formal pre-litigation letter to the Union raising claims of alleged violations wholly unrelated to those contained in the member's internal Union protest.

In *Laborers' International* this Court implicitly rejected the validity of the Secretary's argument. The Court did *not* say that the Act was satisfied if the Union had notice from

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[19] It was also expressly rejected in *Wirtz* v. *Local 257, Glass Bottle Blowers*, 273 F. Supp. 746 (D. N.J. 1967).

the Secretary before suit was filed. Rather, the Court said that the Secretary was permitted:

> ". . . to include in his complaint at least any §401 violation he has discovered which the Union had a fair opportunity to consider and redress *in connection with a member's initial complaint*" (389 U.S. at 484, emphasis added).

It is clear therefore, that the Court was referring to notice received by the Union from a member, in the course of its internal protest machinery, and *not* notice received from the Secretary *after* the Union's highest judicial tribunal has acted.

Not only does the Secretary's argument run counter to the exhaustion language of the statute, it likewise is totally at odds with the objectives Congress sought to achieve in incorporating this requirement into the Act.[20] To illustrate, as we have shown above, Congress wanted to give Unions' judicial tribunals the first opportunity to decide internal Union controversies. But under the Secretary's theory, Unions would not get that opportunity: the Secretary's theory would impose no obligation upon a member to present all his grievances to the Union's judicial body. He need present only one, and that would suffice to give the Secretary *carte blanche*.

2. If the Court is disposed to grant the Secretary's writ on the exhaustion of remedies issue, the Union would join in his further request that the Court likewise decide the substantive question whether the Union's meeting attendance rule is a "reasonable qualification" for candidacy.

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[20] In *Shultz* v. *Local Union 1299, Steelworkers, supra* and *Shultz* v. *Local 1150, Steelworkers, supra,* two district courts held, prior to the issuance of the decision below, that the Secretary's pre-litigation notice satisfied the exhaustion principle by providing the Union a fair opportunity to consider and redress its alleged violations. Those district court decisions are now on appeal to the Sixth and Seventh Circuits respectively.

In addition to this proceeding, the Secretary has initiated lawsuits challenging the elections of seven other Steelworkers' local unions[21] on the same ground, i.e., the alleged unreasonableness of the Steelworkers' requirement that to be eligible for candidacy, a member must have attended half the regular meetings of his local union during the 36 months preceding the election, with credit given for meetings the member could not attend because of his union activities or working hours (Appendix C to the petition at p. 30; Pl. Exhibit 2, p. 48).

In summary fashion, we discuss below the primary factors which support the reasonableness of our rule and which, significantly, persuaded each of the three district courts that have passed upon the merits of the rule to conclude that it is reasonable.

The rule serves legitimate trade union purposes. It encourages attendance at the union's official business meetings; it requires dissidents to attend meetings, thereby providing a check against arbitrary and unbridled control of the union affairs by incumbent officers during their term of office; and it is designed to assure that the candidates will be members who have demonstrated an interest in the union's affairs and who will be better able to cope with the complexities and responsibilities attendant upon holding office.[22] The legitimacy of the Union's objectives is undisputed; indeed, the Secretary has repeatedly recognized in the past that these same objectives would validate a meeting attendance requirement at least of two year's duration.[23]

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[21] See, for example, the cases cited at n. 14, *infra*.

[22] The district court below so held (Appendix C to the petition at pp. 33-34):

> "The meeting attendance requirement is designed to increase attendance at meetings and insure candidates who have demonstrated interest in union problems, are familiar with them, and better qualified to serve as officers of the Union."

[23] See our prior discussion of the Secretary's Interpretative Manual at pp. 7-8, *supra*.

The rule does not by its terms disqualify any member from becoming a candidate. Every member can qualify simply by devoting an average of two hours every other month to the affairs of his union, attending a meeting held in a nearby hall readily accessible to the entire membership.

In these circumstances the Secretary's conclusionary argument (petition pp. 15-16) that the rule "renders" ineligible a high percentage of the members in the Local cannot withstand scrutiny. The point is, as the district court below found, that every member could have qualified simply by attending half the meetings.[24] Contrary to the Secretary's position (petition pp. 15-16) this rule in unlike those which *prevent* members from qualifying who wish to do so —e.g., the "prior office holding" rule declared invalid by this Court in *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6,* 391 U.S. 492 (1968). As such, the Secretary's exclusive reliance on *Hotel Employees* to support his claim that the high percentage of ineligible members "would seem to render the qualification invalid *per se*" (petition p. 16) is totally misplaced. Indeed, this argument is itself inconsistent with the Secretary's previously announced interpretation of the Act—for in upholding 50 percent meeting attendance rule for a two-year period the Interpretative Manual does not state any exception for cases where only a small percentage attend.[25]

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[24] "It is a reasonable requirement, because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision" (Appendix C to the petition at p. 34).

[25] Sometime in the mid-1960's, however, the Secretary instituted a lawsuit against another union based on the theory that an otherwise reasonable rule was invalidated if only a small percentage attended. That lawsuit was withdrawn *only a few months prior to the election involved in the instant case.* In explaining the withdrawal, the Department of Labor stated that the Secretary had conducted "a general review of attendance requirements" and had concluded that a

Of equal importance, the Union's rule is not at odds with the essential evil that Congress sought to eradicate in enacting Title IV—namely, the practice of a few unions to structure their election machinery in such a fashion that it was virtually impossible to remove entrenched incumbent officers. This legislative objective is in no way thwarted by the Steelworkers' instant rule. As shown in the Counterstatement, the rule does not, in practice, prevent opposition to the incumbent union officers. Here, all incumbents were challenged by rivals who qualified under the rule (including the complainant Hantzis) and this same pattern exists throughout the Union.

Based on the foregoing, and in light of the widespread presence of meeting attendance requirements applicable to union elections generally and Congress' expressed desire not to regulate every detail of union elections or impose inflexible rules which would hinder diversity in the administration of democratic election procedures,[26] we submit that the instant rule is not an "unreasonable qualification".

CONCLUSION

For the foregoing reasons, the Secretary's petition for a writ on the procedural question should be denied. If, however, the writ is granted, the Court should also decide the

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rule should *not* be invalidated simply because a small percentage actually qualify. (Def. Exh. Q). Thus, at the time of the election herein, the Secretary's view was that small percentage does not invalidate (Tr. 163). *He changed his mind again when he decided to institute the present action,* as the Chief of his Elections Unit acknowledged (Tr. 164).

[26] See, for example, S.Rep. No. 187, 86th Cong., 1st Sess. (1959, p. 7; *Wirtz* v. *Local 153, Glass Bottle Blowers, supra,* 389 U.S. at 471.

question which the court below did not reach, i.e., the reasonableness of the Union's meeting attendance rule.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 655

JAMES D. HODGSON, SECRETARY OF LABOR, PETITIONER

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL–CIO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the court of appeals (A. 50–55) is reported at 426 F.2d 969. The opinion of the district court (A. 34–37) is unreported.

JURISDICTION

The judgment of the court of appeals (A. 56) was entered on May 8, 1970. On July 30, 1970, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to September 8, 1970. The petition was filed on September 4, 1970, and granted December 7, 1970 (A. 56). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in an action to set aside a union election pursuant to Title IV of the Labor-Management Reporting and Disclosure Act of 1959, the Secretary of Labor may allege only those violations of the Act which were protested internally by the complaining union member, or whether he may also allege additional violations disclosed by his investigation which he has given the union an opportunity to correct.

2. Whether a union rule restricting candidacy for local office to those members who have attended at least 50 percent of the local union meetings during the three-year period preceding nominations is a "reasonable qualification uniformly imposed" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, notwithstanding that (a) it renders nearly 90 percent of the membership ineligible to seek office, and (b) it imposes an unequal burden on members working on different shifts, and enables some members to qualify without attending any meetings at all by having their absences excused because of the performance of overtime work.

STATUTE INVOLVED

The relevant provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 481, 482, are set forth in the Appendix, *infra*, pp. 27–29.

STATEMENT

The Secretary of Labor instituted this action against the respondent Local Union under Title IV

of the Labor-Management Reporting and Disclosure Act of 1959 to set aside the general election of officers conducted by the Local Union on June 12, 1967. The United Steelworkers of America (respondent "International Union") intervened as a party defendant (A. 10–11).

Following the election Nicholas Hantzis, an unsuccessful candidate for the office of president, protested the conduct of the election to the Local Union and then to the International Union, in accordance with the International Union's Constitution and By-Laws (A. 44). His internal protest complained of several matters, including the use of union facilities to prepare campaign literature for the Local Union's incumbent president (A. 44). After failing to obtain relief, Hantzis filed a complaint with the Secretary of Labor on October 12, 1967, pursuant to Sec. 402(a) of the Act (29 U.S.C. 482(a)) (App., *infra*, p. 28). The complaint again charged illegal use of union facilities and added a specific charge that an unreasonably restrictive meeting attendance requirement had been imposed as a condition of candidacy in the election (A. 44).[1]

The Secretary's investigation of Hantzis' complaint substantiated the charge that union facilities had been used improperly to promote the re-election of the Local Union's President, in violation of Section 401(g) of the Act (29 U.S.C. 481(g)). The Secretary also found that the meeting attendance requirement was not a reasonable qualification on the right of members to hold office and that the requirement had not been imposed uni-

[1] In his internal protest, Hantzis did not directly challenge the meeting attendance requirement, but did complain of the manner in which it was applied. See note 2, *infra*, p. 5.

formly (A. 44). The Secretary advised both respondents of these findings by letter dated November 21, 1967, and invited them to discuss the findings and to propose voluntary remedial action (A. 43–44). In order that the parties might fully discuss the findings and attempt resolution of the issues raised without litigation, the respondents, by letters dated November 22, 1967, December 26, 1967, and January 30, 1968, agreed to extend until March 1, 1968, the time in which suit might be filed by the Secretary of Labor to set aside the election (A. 5). On December 18, 1967, and again on January 30, 1968, representatives of the Secretary met with representatives of the respondents to discuss the investigative findings (A. 45). When respondents refused to undertake remedial measures, the Secretary filed this suit on February 29, 1968. The complaint alleged that the respondent Local Union had violated Section 401(e) of the Act (29 U.S.C. 431(e)) (App. infra, pp. 27–28) by imposing an unreasonable meeting attendance qualification on the right of its members to be candidates and to hold office, and by failing to impose that qualification uniformly, and further alleged that union funds had been expended to promote the candidacy of the incumbent president in violation of Section 401(g) of the Act (29 U.S.C. 481(g)) (A. 5–6).

The qualification which the Secretary sought to challenge, as set forth in the International Union's Constitution and its Standard By-Laws for Local Unions, requires a candidate for local union office to have attended at least one-half of the regular Local Union meetings held during the 36 months preceding the

election "unless his Union activities or working hours prevented his attendance (A. 35, 167)." The 36-month period was not applicable to the respondent Local Union because it was not chartered until May 1965 (A. 36). Respondent International ruled that, in order to qualify as candidates in respondent Local Union's 1967 election, members must have attended or received credit for attending at least eleven of the 21 local union meetings held between August 1965 and April 1967 (A. 36).[2]

At the time of its 1967 election respondent Local Union had nearly 600 members who were employed by Howmet Corporation, Aerosystems Division, Loud Products. Approximately 400 members worked on the day shift from 7:00 a.m. to 3:30 p.m. About 200 members worked on the swing shift, whose regular working hours were 3:30 p.m. to midnight. A third shift of seven or eight employees worked during the early morning hours. (A. 36). Respondent Local Union held its monthly meetings in two sessions: one for the day shift, at 7:00 p.m. on the second Monday of each month, and one for the swing shift, beginning at various times between 12:30 a.m. and 1:00 a.m. on the second Tuesday of each month.

[2] In his internal protest Hantzis complained about the failure to include the Local Union's May and June 1965 meetings in applying the requirements (A. 168–174).

Members on the swing shift frequently worked overtime until 1 or 2 a.m., and were credited with excused absences and counted as having attended the meetings when they worked past the scheduled starting time. (A. 39–40). In January 1967, the starting time for the swing shift meeting sessions was changed to 1:00 p.m. (A. 36–37). Attendance at the day shift meetings averaged 46 members. From August 1965 through December 1966 an average of 25 members attended the swing shift meetings. When the swing shift meeting was changed in January 1967, attendance dropped to an average of 14 members. (A. 37).

Respondent Local Union's meeting attendance register showed that only 36 of the Local Union's 600 members, including nine officers, had actually attended the required eleven or more meetings. The district court estimated that 24 of the 200 swing shift employees satisfied the meeting attendance requirement by reason of absences excused for overtime work. (A. 38). Day shift employees could not obtain meeting attendance credits for overtime work, since they were never required to work until 7:00 p.m. (A.).

At the nomination meetings held by respondent Local Union, 49 members were nominated for office (A. 38). Among the 22 members who declined nomination was Marvin E. Wright, who declined because he thought he was ineligible since he had not attended any union meetings. In fact, Wright, who was employed on the swing shift, had sufficient overtime work credits to satisfy the meeting attendance requirement.

(A. 39). The Election Committee reviewed the attendance register to ascertain the eligibility of the remaining 27 nominees. If a nominee had not attended 11 meetings, the Committee requested his foreman to review the company's work records to determine whether he had worked up to or past the scheduled meeting time on any meeting nights. The Election Committee ruled four nominees ineligible: George Pruneri, Elmer Husman, Ray Mahan and Glenn Ross, who attended five, nine, six and seven meetings, respectively. Ross, who should have been credited with six excused absences for overtime work, was erroneously disqualified. Ed Poynter, who had attended only eight meetings and lacked sufficient credits for overtime work, was erroneously ruled eligible, and ran unsuccessfully for the office of Outside Guard. (A. 40–41, 43).

At the trial, an expert witness for the government testified that a study of the constitutions of 72 national and international unions including 90 percent of the country's total union membership showed that only twelve of these unions imposed a constitutional requirement of attendance at meetings as a qualification of candidacy for local offices, and that respondent International Union is one of only two such unions specifying a meeting attendance requirement covering a period as long as three years (A. 135–136). He also testified that, in his opinion, attendance at union meetings is not necessary to give members knowledge of the union's affairs, and that meeting attendance qualifications have not operated to increase attendance at

union meetings (A. 143–145). Respondents introduced no contrary evidence, and presented no testimony to support their contention that members who attend union meetings are better qualified to serve as officers than those who do not.

After trial, the district court held that the use of union facilities to reproduce campaign literature of the Local Union's incumbent president violated Section 401(g) of the Act (29 U.S.C. 481(g)), and ordered a new election for the office of president under supervision of the Secretary (A. 48). The court ruled that the Secretary could properly include in his complaint the charge that the meeting attendance qualification was unreasonable, since he had afforded respondents adequate notice and an opportunity to remedy the alleged violation before filing suit (A. 46). The court held, however, that the meeting attendance qualification was reasonable, since it was "designed to increase attendance at meetings and insure candidates who have demonstrated interest in union problems, are familiar with them, and better qualified to serve as officers of the union," and "because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision" (A. 38).

The court of appeals affirmed. It held that the Secretary lacked standing to challenge the meeting attendance qualification, since it had not been questioned in the complaining member's internal protest, and "Congress intended to empower the Secretary to assert those violations that are fairly apparent from a

member's protest to the union and no others" (A. 53). The court of appeals, accordingly, found it unnecessary to consider whether the attendance requirement violated the Act (A. 52–53).

SUMMARY OF ARGUMENT

I

The court of appeals erred in holding that the Secretary of Labor, in an enforcement action under Section 402 of the Labor-Management Reporting and Disclosure Act of 1959, cannot allege violations which were not included in the union member's internal complaint. This restrictive interpretation of the Secretary's authority is inconsistent with the language of Section 402, which empowers the Secretary to bring a complaint if he finds that *a* violation has occurred. And, although the Court explicitly declined to decide this precise issue in *Wirtz* v. *Local Union No. 125, Laborers' International Union,* 389 U.S. 477, the Court's opinion in that case explained that, in view of the Secretary's exclusive authority in this area and the broad investigative powers conferred on him, it is "most improbable that Congress * * * intended the shape of the enforcement action to be immutably fixed by the artfulness of a layman's complaint * * *." 389 U.S. at 482. The court of appeals' interpretation is also inconsistent with the Secretary's "vital role * * * in protecting the public interest * * *" as opposed to protecting merely the interest of individual complaining union members, 389 U.S. at 483, and with the con-

cept articulated by this Court in *Wirtz* v. *Local 153, Glass Bottle Blowers Association*, 389 U.S. 463, 473, that "Congress, although committed to minimal intervention, was obviously equally committed to making that intervention, once warranted, effective in carrying out the basic aim of Title IV."

Our position is entirely consistent with the statutory requirement that union members exhaust their internal remedies before filing a complaint with the Secretary. This exhaustion requirement is significantly different from a statutory provision which requires exhaustion of the remedies of an administrative agency. Such statutes are designed to make use of the particular expertise of the relevant agency; that purpose is served under the present Act by the Secretary's investigation and determination of whether to bring a lawsuit, rather than by the requirement that there must be a complaining union member who has exhausted internal union remedies. The latter requirement is intended merely to assure that, if all members of the union are satisfied, the results of the election will remain undisturbed. Moreover, in the present case, the Secretary gave the respondent unions a full three months to take voluntary remedial action with respect to the charges which the Secretary later brought in this lawsuit.

II

The meeting attendance qualification on candidacy under consideration in this case is not a "reasonable

qualification uniformally imposed", as required by Section 401(e). As the Court explained in *Wirtz v. Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492, 499, "[t]he check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents." Here nearly 90 percent of the union members were rendered ineligible by the meeting attendance requirement; in our view this fact alone prevents the respondents from meeting their burden of showing that the attendance requirement falls under this Court's narrow definition of the term "reasonable qualification uniformly imposed". Respondents' purported justification for the requirement—that it was designed to insure that candidates for union office are familiar with union problems—incorrectly "assumes that rank-and-file union members are unable to distinguish qualified from unqualified candidates for particular offices without a demonstration of a candidate's performance in other [union affairs]." *Hotel Employees, supra*, 391 U.S. at 504. Furthermore, the union here is not even "faithful to its own premise," 391 U.S. at 504, because a member who is excused from meetings by reason of working overtime is permitted to run for any office without having actually attended any meetings.

ARGUMENT

I. THE SECRETARY OF LABOR IS NOT RESTRICTED TO ALLEGING ONLY THOSE VIOLATIONS WHICH WERE INTERNALLY PROTESTED BY THE COMPLAINING UNION MEMBER; IN THIS CASE HE PROPERLY INCLUDED AN ADDITIONAL VIOLATION DISCLOSED BY HIS INVESTIGATION WHICH HE FIRST AFFORDED THE UNION AN OPPORTUNITY TO REMEDY

In *Wirtz* v. *Local Union No. 125, Laborers' International Union*, 389 U.S. 477, this Court held that the Secretary's power to institute an action to invalidate a union election is not limited to the particular allegation made by a complaining union member. The specific issue presented in that case was whether the Secretary could challenge violations which allegedly had occurred during a union general election, even though the internal union complaint had involved only the runoff election held five weeks later. The Court unanimously held that the Secretary was entitled to challenge the general election because, on the facts of that case, the "union had fair notice from the violation charged by (the union member) in his protest of the runoff election that the same unlawful conduct probably occurred at the earlier election as well." 389 U.S. 477, 481. The Court explicitly found it unnecessary to consider in *Laborers' International* whether "a member's protest triggers a § 402 enforcement action in which the Secretary would be permitted to file suit challenging any violation of § 401 discovered

in his investigation of the member's complaint." 389 U.S. at 482.[3]

Although the precise question involved here was thus not decided in *Laborers' International,* the restrictive interpretation of the Secretary's authority adopted by the court below is inconsistent with the purpose of

[3] Our position is that the Secretary may bring suit with respect to any violation he finds in the course of his investigation whether or not that violation is alleged in the internal complaint or in the union members' complaint to the Secretary. This position has been upheld in *Shultz* v. *Local Union 1299, United Steelworkers*, 73 LRRM 2673, 62 L.C. ¶10,720 (E.D. Mich.); *Shultz* v. *Local #1150, United Steelworkers*, 75 LRRM 2869, 64 L.C. ¶ 11,288 (S.D. Ind.); *Wirtz* v. *Independent Petroleum Workers, Inc., Local 1, I.O.W.U.*, 307 F. Supp. 462 (N.D. Ind.); same case, 75 LRRM 2340, 63 L.C. ¶11,190. See, also, *Wirtz* v. *Local 1377, IBEW*, 63 LRRM 2029, 54 L.C. ¶11,391 (N.D. Ohio).

Several district court decisions have held that the Secretary cannot bring suit if the alleged illegality which is the basis of the suit has not been presented to the union for action prior to the initiation of suit. *E.g., Wirtz* v. *Local Union 169, International Hod Carriers*, 246 F. Supp. 741 (D. Nev.); *Wirtz* v. *Local Unions No. 406, etc., Operating Engineers*, 254 F. Supp. 962 (E.D. La.); *Wirtz* v. *Local Union No. 450, etc., Operating Engineers*, 63 LRRM 2105, 54 L. C. ¶11,451 (S.D. Tex.). These cases did not hold, however, that the Secretary was barred from seeking effective relief merely because the full ramifications of the illegality were not specified in the internal complaint. They, in fact, allowed relief as to "every issue which the defendant union had a fair opportunity to consider and resolve." *Wirtz* v. *Local Union 169, supra*, 246 F. Supp. at 752; *Wirtz* v. *Local Union No. 1622, etc.*, 285 F. Supp. 455 (N.D. Cal.). The court of appeals for the Second Circuit has held that the Secretary cannot seek to invalidate an election upon a ground which was not raised in the union members' complaint to the Secretary. *Local Unions No. 545, etc., International Union of Operating Engineers* v. *Wirtz*, 381 F. 2d 448. We disagree with this restriction on the Secretary's power under Section 402 as well as with the closely related restriction under consideration in the present case.

Title IV of the Labor-Management Reporting and Disclosure Act of 1959 as articulated in this Court's opinion in *Laborers' International.* And, as the Court there pointed out in rejecting the union's contention that the Secretary is limited to the allegations made in the union member's initial complaint, "neither the language of the statute nor its legislative history" supports such a restrictive view of the Secretary's role.

Indeed, the statute does not, in terms, limit the Secretary's investigation or his authority to institute suit to the violation alleged in the complaint. It empowers him to bring a civil action, after investigating the union member's complaint, "if he finds probable cause to believe that *a* violation of this title has occurred * * *" (Section 402(b), *infra,* pp. 28–29) (emphasis added). It is significant that the statute is not limited to "the violation alleged" but is framed in terms which entitle the Secretary to proceed, after a protest has been made to the union and rejected, if he finds *any* violation to have occurred. This language was deliberately chosen by Congress. A prior draft of the bill (S. 1002, 86th Cong. 1st Sess., 105 Cong. Rec. 2067) had provided that if the union member alleged a violation of the Act, the Secretary was to investigate "such allegation" and institute an action if he found probable cause to believe such allegation is true. But under the language ultimately adopted, the Secretary's responsibility is not similarly qualified; he is, instead, as the Senate Report explained,

"to investigate the complaint and determine whether there is probable cause to believe that an election was not held in conformity with the requirements of the bill" (S. Rep. No. 187, 86th Cong., 1st Sess., 21).

Congress' choice of the broader formulation was consistent with the legislative scheme of the Act as a whole, which entrusted enforcement of Title IV exclusively to the Secretary of Labor. Congress rejected proposed bills which would have made Title IV rights enforceable by private suit (H.R. 8342, 86th Cong., 1st Sess., 105 Cong. Rec. 15887; S. 748, 86th Cong., 1st Sess., 105 Cong. Rec. 1276), and "decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest" (*Calhoon* v. *Harvey*, 379 U.S. 134, 140).

While the Secretary may act only in response to a complaint by a member of the union, it would, in our view, make little sense to restrict the scope of the lawsuit brought by the Secretary to the four corners of the complaint the union member originally made. As this court recognized in *Laborers' International*, union members do not, as a rule, file carefully drafted complaints. 389 U.S. at 482. Consequently, if the complaint were the measure of the Secretary's powers, he would often be artificially limited, as here, by technical flaws in that document or by the individual member's failure to appreciate the full scope or consequences of the violation of which he is complaining. Indeed, his investigation of the complaint is not

so limited [4] and, as this Court noted in the *Laborers' International* case,

> it is most improbable that Congress deliberately settled exclusive enforcement jurisdiction on the Secretary and granted him broad investigative powers to discharge his responsibilities, yet intended the shape of the enforcement action to be immutably fixed by the artfulness of a layman's complaint which often must be based on incomplete information. The expertise and resources of the Labor Department were surely meant to have a broader play. [389 U.S. at 482.]

Furthermore, as a practical matter, the member's protest ordinarily encompasses a particular grievance which has contributed to his own or his faction's failure to attain office in an election. The broader public interest whose enforcement is entrusted to the Secretary is not so narrowly oriented. See Beaird, *Union Officer Election Provisions of the Labor-Management Reporting and Disclosure Act of 1959,* 51 Va. L. Rev. 1306, 1329–1330. The effect of restricting the Secretary to pursuing only those violations alluded to in the member's protest would be to subordinate the broader public interest to the private motivation of the complaining member. The Secretary's position, that his authority is not so confined, is plainly more consistent with the remedial purpose of Title IV. As this Court observed in the *Laborers'* case:

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[4] The Secretary's investigation is not limited by the subject matter or scope of the complaint received, or of the preceding internal union protest. *Wirtz* v. *Local 191, International Bro. of Teamsters,* 321 F. 2d 445 (C.A. 2); *Local 57, International Union of Operating Engineers* v. *Wirtz,* 346 F. 2d 552 (C.A. 1).

> [S]o to constrict the Secretary would be inconsistent with his vital role * * * in protecting the public interest bound up in Title IV. The Act was not designed merely to protect the right of a union member to run for a particular union office in a particular election. Title IV's special function in furthering the general goals of the LMRDA is to insure free and democratic union elections, the regulations of the union electoral process enacted in the Title having been regarded as necessary protections of the public interest as well as of the rights and interests of union members. [389 U.S. at 482–483.] [5]

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[5] In the *Laborers'* case (389 U.S. at 483), the Court also recognized an analogy between the Secretary's role under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 and that of the General Counsel of the National Labor Relations Board in investigating unfair labor practices, which he may do only after receipt of a charge. Pertinent, therefore, is the Court's discussion of the role of the Board's General Counsel, in *Labor Board* v. *Fant Milling Co.*, 360 U.S. 301, 307–308:

"A charge filed with the Labor Board is not to be measured by the standards applicable to a pleading in a private lawsuit. Its purpose is merely to set in motion the machinery of an inquiry. * * * The responsibility of making that inquiry, and of framing the issues in the case is one that Congress has imposed upon the Board, not the charging party. To confine the Board in its inquiry and in framing the complaint to the specific matters alleged in the charge would reduce the statutory machinery to a vehicle for the vindication of private rights. This would be alien to the basic purpose of the Act. The Board was created not to adjudicate private controversies but to advance the public interest * * *.

"Once its jurisdiction is invoked the Board must be left free to make full inquiry under its broad investigatory power in order properly to discharge the duty of protecting public rights which Congress has imposed upon it. * * *"

The present case illustrates the extent to which the holding of the court of appeals could undermine the effectiveness of the Title IV remedy. The violation protested by Hantzis was, in the Secretary's view and in the view of the district court and the court of appeals, sufficient justification for setting aside the election of respondent Local Union's president. In a supervised election, the Secretary must seek to correct all defects in the first election, to "prevent the unfairness in the first election from infecting, directly or indirectly, the remedial election" (see *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 389 U.S. 463, 474). Furthermore, Section 402(c) of the Act requires that a supervised election be held "so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization." However, in the view of the court below, the Secretary must supervise an election in accordance with provisions of the organization's by-laws which he deems unlawful unless there has been a specific complaint by a member to the union about such provisions.[6]

Moreover, in the absence of a judicial determination that the qualification at issue is unreasonable, it will almost surely be imposed again in the union's next

[6] We recognize that theoretically the Secretary could raise the question concerning the validity of particular constitutional provisions in supplementary proceedings in connection with the conduct of the supervised election. However, this course would undermine the congressional intent that supervised elections, once ordered, should be held without delay. See Section 402(d) (29 U.S.C. 482(d)), which provides that an order directing an election, while appealable, shall not be stayed pending appeal.

regular election, and thereafter in succeeding elections unless a member is moved to protest it specifically. This result is plainly inconsistent with this Court's observation in *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 389 U.S. 463, 473, that "Congress, although committed to minimal intervention, was obviously equally committed to making that intervention, once warranted, effective in carrying out the basic aim of Title IV."

As a practical matter, the statutory time schedule [7] effectively precludes the Secretary from inviting a complaining member, or another member, of the union to re-invoke internal remedies with respect to violations outside the scope of the initial protest disclosed by his investigation. But even if it were feasible, such a procedure would not serve any of the statutory objectives. While Section 402(a) authorizes the Secretary to step in only at the request of a union member who has exhausted internal union remedies, it does not endow the union with any fact-finding or policy-determining functions. Its exhaustion requirement is significantly different from a statutory provision which requires exhaustion of the remedies of a governmental administrative agency or which vests primary jurisdiction over a dispute in such an agency. Such statutes are designed, in varying degrees, to assure a leading role for the expert agency in finding

[7] Section 402(b) of the Act provides that after a complaint is filed with the Secretary, he has sixty days in which to conduct an investigation of the complaint and bring an action against the union.

the facts, interpreting the facts, initially construing the statute and, in general, contributing to uniformity in the administration of the law.

To the extent that any of these purposes are to be served under the present Act, they are served by the Secretary's investigation and determination of whether to bring a lawsuit, rather than by the requirement that there must be a complaining union member who has exhausted internal union remedies. Congress has, of course, not conferred any form of governmental authority over these disputes on the unions, whose officers tend to have an adversary interest in such disputes; and it is obvious that the various unions involved in such disputes, with their diversity of views and of internal remedies,[8] could not be expected to play a role comparable to that of a single, expert administrative agency in promoting consistency in the Act's interpretation or administration.

Indeed, as this Court has explained, the exhaustion requirement of Section 402(a) is basically intended only to assure that the results of union elections will not be disturbed if they are satisfactory to all members of the union or if dissatisfaction with the results can be adequately alleviated through internal union remedies. See *Laborers' International, supra,* 389 U.S. 484. Petitioner has been mindful here of the congressional intent to preserve "a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections" (S. Rep. No. 187, 86th Cong., 1st

[8] See, generally, *An Analysis: Local Union Election Appeals,* Department of Labor, 1966.

Sess., 21). He did not begin his investigation until he had satisfied himself that Hantzis had invoked his internal union remedies. In addition, he has adopted the practice, followed in this case, of notifying the union and its parent organization in advance of filing suit of all violations disclosed by his investigation, and giving the union at that time the opportunity to take voluntary corrective action. In the present case, the respondent unions were first notified of the Secretary's findings by letter dated November 21, 1967. The Secretary, after agreeing to three successive extensions of time, filed this suit on February 29, 1968. Thus, the respondents had a full three months—the equivalent of the time alloted to them under Section 402(a)(2) for consideration of a member's protest—to offer voluntary remedial action. Their proffered defense, therefore, is not that they lacked an opportunity to consider and rectify all the violations alleged in the Secretary's complaint, but only that such opportunity was presented to them by the Secretary following his investigation and not in the member's initial protest. Congress surely did not intend that this technical distinction would defeat the dominant statutory purpose of insuring "free and democratic union elections" (*Laborers' International, supra,* 389 U.S. at 483).

II. RESPONDENTS' RULE REQUIRING A CANDIDATE FOR LOCAL UNION OFFICE TO HAVE ATTENDED AT LEAST ONE-HALF OF THE LOCAL UNION MEETINGS HELD DURING A THREE-YEAR PERIOD "UNLESS HIS UNION ACTIVITIES OR WORKING HOURS PREVENTED HIS ATTENDANCE" WAS NOT A REASONABLE QUALIFICATION UNIFORMLY IMPOSED

Because of its national importance in the administration of the Act, we have asked this Court—and re-

spondents have joined in this request (Br. Opp. 16)—also to decide the substantive issue left unresolved by the court below: whether the meeting attendance qualification on candidacy applied in the challenged election is a "reasonable qualification uniformly imposed," as required by Section 401(e).[9] This question was decided by the district court,[10] and the record as to it is complete (see Statement, *supra*, p. 8).

In our view, the district court's decision reflected a basic misunderstanding of the principles governing the determination whether restrictions on candidacy for local union office are reasonable. In *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492, this Court held invalid a union bylaw which limited eligibility for certain major union offices to members who had served in one or more elective offices. The Court emphasized the congressional intent to keep union leadership responsive to the membership through the election process, and stated that "The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents." 391 U.S. at 499. "[G]iven the objective of Title IV," the Court held, "a candidacy limitation which renders 93% of

[9] This issue was presented by the second question of the petition, which was granted without limitation.

[10] Two other district courts have followed the decision of the district court in the instant case, permitting the Secretary to challenge the validity of the rule even though it was not challenged in the union complaint, but upholding its reasonableness. *Shultz* v. *Local Union 1299, Steelworkers*, 73 LRRM 2673, 62 L.C. ¶10,720 (E.D. Mich.); *Shultz* v. *Local #1150, Steelworkers*, 75 LRRM 2869, 64 L.C. ¶11,288 (S.D. Ind.).

union members ineligible for office can hardly be a 'reasonable qualification' ". *Id.* at 502.

We submit that the qualification imposed in the instant case is unreasonable under the standard set forth by this Court in the *Hotel Employees* case. Nearly 90 percent of the union members here were rendered ineligible by the meeting attendance rule, a fact which, in the absence of extraordinary circumstances, would seem to render the qualification invalid *per se*. The district court concluded that the rule was not unreasonable "because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision" (A. 38). However, in the case of employees whose work schedules do not qualify them for the excuse provision, compliance with the rule requires a considerable effort on the part of the would-be candidate over an extended period of time preceding the election.[11] If controversial issues were to arise within the year preceding the election, an opposition group might be unable to muster a slate of candidates with sufficient foresight to have accumulated the nec-

[11] In the present case, the local union had been in existence for only two years before the election, so that candidates were required to have attended (or to have been excused from) 11 out of 21 monthly meetings. Even under this shortened version of the three-year rule in the International Constitution, a member would have to begin attending every subsequent meeting nearly a year before the election in order to qualify. Had the International rule been in full force and effect, a member would have to begin attending meetings, and then to attend every single meeting held, for a full 18 months in order to be a candidate. See *Wirtz* v. *Independent Workers Union of Florida*, 65 LRRM 2104, 55 L. C. ¶11,857 (M.D.) Fla.).

essary meeting credits. Respondents' argument to the courts below—that the attendance requirement was designed to insure that candidates for union office are familiar with and interested in union problems—[12]

> assumes that rank-and-file union members are unable to distinguish qualified from unqualified candidates for particular offices without a demonstration of a candidate's performance in other [union affairs]. But Congress' model of democratic elections was political elections in this country, and they are not based on any such assumption. Rather, in those elections the assumption is that voters will exercise common sense and judgment in casting their ballots. * * * [*Hotel Employees, supra,* 391 U.S. at 504.] [13]

The Court stated in *Hotel Employees* that "Congress plainly did not intend that the authorization in §401(e) of 'reasonable qualifications uniformly imposed' should be given a broad reach." 391 U.S. at 499. This authorization, like exceptions to other remedial legislation, should be narrowly construed, and the burden of proof should rest upon the party asserting it. See, *e.g., Phillips Co.* v. *Walling,* 324 U.S. 490, 493; *Mitchell* v. *Kentucky Finance Co.,* 359 U.S. 290, 295. Respondents here not only failed to intro-

[12] While the district court also held that the attendance requirement was justified on the ground that it was "designed to increase attendance at meetings" (*supra*, p. 8), it would, of course, be possible for the union to devise other inducements or sanctions to encourage attendance which would not interfere with the representative character of union elections.

[13] See, also, *Wirtz* v. *Local Union 262, Glass Bottle Blowers Ass'n* 290 F. Supp. 965, 968 (N.D. Cal.).

duce evidence that union members become better qualified to hold union office by attending meetings, but also failed to rebut expert testimony in this record to the contrary. See *supra,* pp. 7–8. As in *Hotel Employees,* the respondent unions have failed to sustain their burden. Cf. 391 U.S. at 503.

Moreover, here, as in *Hotel Employees,* the union "is not faithful to its own premise." 391 U.S. at 504. In *Hotel Employees,* a member could be *appointed* to any office without satisfying the prior office-holding requirement. In this case, a member could be eligible as a candidate without ever having attended a single meeting, provided that he was employed on the swing shift and was called upon to work overtime on a sufficient number of meeting nights. In addition, the meeting attendance requirement operates to discriminate against day-shift employee members, who are never entitled to take advantage of the work excuse provision. Cf. *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n,* 244 F. Supp. 745, 748 (W.D. Pa.), reversed on other grounds, 405 F.2d 176 (C.A. 3). Since the union electorate is thus entrusted with the evaluation of whatever bearing they deem swing shift candidates' non-attendance of meetings to have on their qualifications for office, there is obviously no reason why the voters cannot similarly make their own evaluation of the relative importance of other candidates' attendance or nonattendance.[14]

[14] We also argued in the courts below that the qualification was not uniformly imposed in this particular election because one candidate was disqualified notwithstanding a combined record of meeting attendance and excused absences which satisfied the requirement, while another member was permitted to be a can-

CONCLUSION

The decision of the court of appeals should be reversed and the case remanded to the district court with directions to order an election under the supervision of the Secretary.

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JANUARY 1971.

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didate although he did not satisfy the requirement, either by actual attendance at meetings or by a combination of attendance and excused absences (see *supra*, p. 7). The district court found that these aberrations were the result of "honest, unintentional mistakes". This finding, however, is not a defense under the Act, which requires uniform application of eligibility qualifications, regardless of intent or motive. See *Wirtz* v. *Local 191, International Brotherhood of Teamsters, etc.*, 226 F. Supp. 179, 186 (D. Conn.); *Wirtz* v. *Independent Workers Union of Florida*, 65 LRRM 2104, 55 L.C. ¶11,857 (M.D. Fla.). Since uniformity is basic to democratic and free elections, the district court erred in ruling that these errors in the conduct of the election did not warrant setting it aside.

APPENDIX

STATUTES INVOLVED

The Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*, provides in pertinent part:

TITLE IV. ELECTIONS

TERMS OF OFFICE; ELECTION PROCEDURES

* * * * *

SEC. 401. (b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

* * * * *

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bar-

gaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

* * * * *

ENFORCEMENT

SEC. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body or,

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation.

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall,

within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

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IN THE

Supreme Court of the United States

October Term, 1970

No. 655

JAMES D. HODGSON, Secretary of Labor,
Petitioner,

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Whether, in a Title IV action under the LMRDA, the Secretary may allege violations which he admits were not raised by any member in the union's internal protest procedure.

2. Whether the union's requirement that a candidate for office have attended half the union's monthly meetings in the 21 months preceding the election is a "reasonable qualification" for candidacy, where the requirement is designed to serve legitimate union interests, attendance is not difficult for any member, and the requirement does not in practice preclude contests for union office.

COUNTER-STATEMENT OF THE CASE

Introduction

United Steelworkers of America, AFL-CIO ("USWA") is an international labor organization with one-and-one-quarter million members. USWA has 3,700 affiliated local unions, one of which is Local 6799 (A. 156). The membership of Local 6799 consists exclusively of the 578 employees of the Pomona, California, plant of H. W. Loud Division, Howmet Corp. (A. 14, 34, 75).

USWA's governing body is the International Convention, which meets every two years. The Convention is comprised of delegates elected by the 3,700 constituent local unions. The Convention adopts the International Constitution, which governs the affairs of the organization between conventions (A. 156). Among the matters regulated in the Constitution is the election of officers of local unions (A. 167).

Until 1962, the Constitution provided that the term of office in each of USWA's locals would be two years. It also provided that, to be eligible to run for local union office, a member must have attended at least one-half of the regular membership meetings conducted by his local during the preceding term of office (i.e. during the preceding 24 months) (A. 156).[1]

At the 1962 Convention, the Constitution was amended to provide that the term of local union offices would be

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[1] The purposes of the meeting attendance rule are several: to encourage attendance at the membership meetings, where the official business of each local is transacted (A. 38, 117); to provide a check on the incumbent officers' unbridled control of union affairs, by assuring that those who disagree with the incumbents' policies (and who wish to oppose them in the next election) will attend union meetings (A. 147-148); to assure that those who attain union office are conversant with the nature of the union's affairs and are prepared to assume the responsibility of union management (A. 38, 94); and to assure that those who acquire union office have a demonstrated interest in union affairs (A. 38, 117).

three years, rather than two.[2] No change was made in the meeting attendance requirement (A. 156).

At the 1964 Convention, rank-and-file delegates proposed that the Constitution be amended to expand the meeting attendance requirement to thirty-six months, so that it would be coterminous with the new three-year term of office. Although USWA's officers opposed the change, and urged that it not be made, a majority of the delegates voted to make the change (A. 156-157).

The Secretary of Labor was less enthusiastic than USWA's membership about the new meeting attendance rule (A. 93-94). When the first series of USWA local union elections were conducted under the new rule (all 3,700 USWA locals conducted elections in 1967) the Secretary resolved to challenge the rule as violative of the LMRDA. Accordingly when members filed complaints with the Secretary about other aspects of their local union elections, the Secretary seized upon these as a vehicle for attacking the meeting attendance rule. He instituted eight lawsuits—one of them the instant case—challenging matters which *had* been raised by members in their internal union protests, and in each of these lawsuits he appended a challenge to USWA's meeting attendance rule.[3]

Three of these lawsuits have now been tried and decided.[4] In each, the district court held that USWA's meet-

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[2] This was consistent with Section 401(b) of the LMRDA, 29 U.S.C. § 482(b), which requires that locals elect officers "not less than once every three years."

[3] In addition to the instant case, and those cited in footnotes 4 and 5, *infra*, the Secretary instituted the following actions: *Wirtz* v. *Local Union 2173, USWA*, Civ. Ac. No. 68-76 (S.D. Ohio); *Wirtz* v. *Local Union 5724, USWA*, Civ. Ac. No. 68-30 (S.D. Ohio); *Wirtz* v. *Local Union 1219, USWA*, Civ. Ac. No. 68-1425 (W.D. Pa.); *Wirtz* v. *Local Union 1578, USWA*, Civ. Ac. No. 68-1421 (W.D. Pa.). These four actions are pending and have not been tried.

[4] One case became moot, and was withdrawn, because the local was merged into another local. *Wirtz* v. *Local Union 1798, USWA*, Civ. Ac. No. C-48751 (N.D. Cal.).

ing attendance rule is a "reasonable" rule which does not violate the LMRDA. One is the instant case (A. 38, 46); the others are *Shultz* v. *Local Union 1150, USWA*, 75 LRRM 2869, 64 L.C. Para. 11, 288 (S.D. Ind. 1970), and *Shultz* v. *Local Union 1299, USWA*, 73 LRRM 2673, 62 L.C. Para. 10, 720 (E.D. Mich. 1970). The Secretary appealed all three decisions. In the instant case, the Court of Appeals for the Ninth Circuit held that the Secretary was not entitled to challenge the meeting attendance rule, because the matter had not been raised in the internal union protest proceedings (A. 50-54). Accordingly, the Court of Appeals did not pass upon the correctness of the district court's holding that the meeting attendance rule is reasonable (A. 54, n. 7). The other two appeals are pending in the Sixth and Seventh Circuits, and are being held in abeyance pending this Court's resolution of the instant case.[5]

Meanwhile, three more years have passed, and USWA's 3,700 local unions have held another round of elections. Once again, the Secretary, seizing upon members' complaints about *other* aspects of their locals' elections, has instituted a series of lawsuits in which the meeting attendance requirement is being challenged.[6]

The only issue which this Court *must* decide in the instant case is whether the Secretary is entitled to challenge matters which were not complained of by members in the internal union proceedings. But should this Court decide that issue favorably to the Secretary, we join in the Secre-

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[5] *Hodgson* v. *Local Union 1150, USWA*, Misc. Record No. 996 (7th Cir.); *Hodgson* v. *Local Union 1299, USWA*, No. ..... (6th Cir.).

[6] *Hodgson* v. *Local Union 2609, USWA*, Civ. Act. No. 70-1445-K (D. Md.); *Hodgson* v. *Local Union 1014, USWA*, Civ. Ac. No. 70-H-297 (N.D. Ind.); *Hodgson* v. *Local Union 3911, USWA*, Civ. Ac. No. 71-C-74 (N.D. Ill.); *Hodgson* v. *Local Union 3489, USWA*, Civ. Ac. No. 70-C-117 (S.D. Ind.); *Hodgson* v. *Local Union 4580, USWA*, Civ. Ac. No. 1583-70 (D. N.J.); *Hodgson* v. *Local Union 6014, USWA*, Civ. Ac. No. 70-3483 (E.D. Pa.); *Hodgson* v. *Local Union 6214, USWA*, Civ. Ac. No. 70-28-F (N.D. W.Va.).

tary's request that this Court reach and decide the reasonableness of the meeting attendance rule, for otherwise the parties will be compelled to continue their litigation of this issue in the 14 cases now pending in the lower courts.

The Election at Local 6799

This case arises out of the 1967 election of officers at Local 6799. In accordance with standard USWA procedure, a nominating meeting was held at which any member of Local 6799 could nominate any other member as a candidate for local union office (A. 131). All told, 49 persons were nominated for the 11 offices, but 22 declined to run (A. 18). This left 27 candidates who were nominated and who wished to run.

At the nominating meeting, an Election Committee was selected. One of the Committee's duties was to determine whether those nominated and desirous of running satisfied USWA's meeting attendance requirement (A. 39). Because Local 6799 had been in existence for only 21 months, and had held one membership meeting each month, a nominee would be eligible if he had attended 11 of the 21 meetings (or was excused from attending because working or conducting union business when the meeting was held) (A. 16, 24, 37-38).

The Election Committee found that, of the 27 candidates, all but four satisfied the meeting attendance requirement. These four were given written notice that they had been found ineligible, and were invited to notify the Committee within 10 days if they believed the Committee had erred in ruling them ineligible. None of the four challenged the Committee's determination, and accordingly the election was conducted with the 23 candidates who had been found eligible. There were three candidates on the ballot for President, four for Vice-President, three for Treasurer, two each for Recording Secretary, Financial Secretary, Guide,

Inside Guard and Outside Guard, and three for the three Trustee positions (A. 41-43).

The Election Protest

Following the election, one of the defeated candidates for President, Nicholas Hantzis, filed an internal union protest challenging the conduct of Local 6799's election (A. 168-175). Hantzis' protest did not challenge the reasonableness of the meeting attendance rule (indeed, Hantzis had qualified under the rule). The Secretary has conceded that Hantzis' protest neither afforded the union fair notice that the meeting attendance rule was being challenged as invalid nor called upon the union to correct any such invalidity (A. 12).

USWA's International Executive Board—the body mandated by USWA's Constitution to resolve election protests—conducted hearings on the matters which were raised by Hantzis' protest and concluded that they did not warrant any remedial action (A. 176-182). (All told, USWA's Board decided 94 election appeals during the period 1964-1967, and ordered remedial action in 51. Hantzis' appeal was one of the minority in which no remedial action was ordered).

Hantzis thereupon filed a complaint with the Secretary of Labor pursuant to Section 402(a) of the LMRDA (A. 183-187). That complaint advanced a number of claims which had not been raised in the internal union protest, including a claim that the existence of the meeting attendance requirement had not been adequately communicated to Local 6799's membership (A. 184).[7]

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[7] Petitioner's brief (page 3) incorrectly states that Hantzis' complaint to the Secretary "added a specific charge that an unreasonably restrictive meeting attendance requirement had been imposed as a condition of candidacy in the election." A fairer reading of Hantzis' complaint (A. 184) is that he was protesting the lack of communication of the rule, not the reasonableness of the rule itself. Indeed, in a pre-trial interview Hantzis advised the union's counsel that he believed

The Secretary investigated Hantzis' complaint, and concluded that one of the issues which he had raised within the union was valid: that one of his opponents for the office of President had requested and obtained permission to run off campaign leaflets on a union mimeograph machine (at a cost to the union of $13.04) and the union did not advise other candidates that they would be accorded the same opportunity. The Secretary's representative notified the union that the Secretary considered this to constitute an expenditure of union funds to promote candidacy, violative of Section 401(g) of the LMRDA, 29 U.S.C. § 481(g) (A. 189). Additionally, the Secretary's representative notified the union that the Secretary considered the meeting attendance requirement to be an "unreasonable" eligibility requirement, violative of Section 401(e) of the Act (A. 189). The Union requested and obtained two meetings with the Secretary's representatives in which it sought to dissuade the Secretary from instituting suit (A. 92-95, 98-102, 105, 116-117). These efforts failed, and the Secretary instituted the present action.

Proceedings in the District Court

The complaint alleged that Section 401(g) had been violated by the mimeographing of a candidate's leaflet, and that Section 401(e) had been violated by the use of the meeting attendance requirement (A. 3-6).[8]

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the rule reasonable; but when union counsel sought to elicit this view from Hantzis at trial, the court sustained an objection from Government counsel that "I don't think that one man's opinion on this is particularly relevant" (A. 86-87). With respect to Hantzis' claim that the rule had been inadequately communicated, the evidence was overwhelmingly to the contrary (A. 71-72, 74-76, 81, 132, 154-155, 160-162) and the district court found adequate communication (A. 35).

[8] In addition, the complaint alleged that the meeting attendance rule had been applied in a non-uniform fashion (A. 5). At trial, it developed that the Election Committee had made two inadvertent arithmetical errors. One candidate, Poynter, was permitted on the ballot

At trial, the facts relating to the meeting attendance requirement were proved as follows: The local held one meeting each month, lasting approximately two hours (A. 16, 132).[9] The meeting was held in a hall located fifteen minutes from the plant (A. 18). Any member who was working at the time the meeting was scheduled to begin was given credit as though he had attended (A. 16, 129-130). The Secretary conceded that there were no circumstances making it difficult for any member to attend, and that he had not found a single member who claimed that attendance constituted a hardship of any kind (A. 114-115).

The monthly meeting is the place where the official business of the local is transacted, and where the decisions are made (by vote of those attending) on all important union matters. At a typical meeting, the Recording Secretary reads all communications received by the local during the preceding month (A. 81); the Treasurer and Financial Secretary report on all financial affairs, and each proposed disbursement is voted upon by the members present (the local's cash flow is approximately $1,600 per month, and

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although he had attended insufficient meetings. As he lost, his inclusion did not affect the outcome (A. 20, 23, 41). Another candidate, Ross, was found ineligible, although he had sufficient work credits (A. 40). Ross knew that the Election Committee had erred, but he refused the Committee's invitation that errors be brought to its attention because "I didn't really want the office, anyhow" (A. 160). The district court concluded that the Ross exclusion did not warrant relief because the mistake was "honest" and "unintentional" and "because Mr. Ross failed to contest his disqualification prior to the election" (A. 46). The Court of Appeals did not decide this issue, because it ruled that the Secretary was not entitled to litigate it (A. 52-54). The Secretary has not raised this issue in his "Questions Presented," and we therefore do not discuss it herein.

[9] Actually, the meeting was split into two parts: one for the day shift workers and the other for the evening, or "swing shift" workers (A. 16). It was considered a single meeting with the two groups attending at different sessions, and attendance at either session was sufficient for credit under the meeting attendance rule (A. 73).

quite often there are debates about expenditures) (A. 84); a staff representative employed by USWA reports on those national union affairs which he believes the members should know about (A. 85); the chairman of the local's Grievance Committee reports on the status of each pending grievance alleging that the employer is violating the collective bargaining agreement (A. 85); reports of the Workmen's Compensation Committee, Welfare Committee, Safety Committee, and Finance Committee are presented, debated and resolved (A. 86); and in the "unfinished business" and "new business" sections of the meeting all other matters of importance to the union are debated and resolved by membership vote (A. 86). The local's incumbent president repeatedly advised the members that if they didn't like the way the union's affairs were conducted "come out and attend meetings so that you can go ahead and have a say in it and you'll be able to run for office and change it" (A. 154-155).

Of Local 6799's 578 members, 36 (including nine incumbent officers) actually attended eleven of the 21 monthly meetings (A. 38). The additional number who were eligible by reason of meetings attended plus meetings-credited-because-working was never proved. The Election Committee had checked the work records only for those who were nominated (A. 39). Of the ten nominees who had not attended 11 meetings, six became eligible when work credits were added.[10] All told, 23 of the 27 persons nominated were eligible (A. 18).

Although the trial court intimated that it was the Secretary's burden to show the percentage of the total membership which did not meet the rule, if the Secretary intended to rely upon low percentage (A. 149), and the Secretary acknowledged that he had no evidence as to the per-

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[10] See A. 20 (Ross, Bowman, Wooten, Gibson); A. 23 (Wright); Tr. 243 (Ainsworth).

centage of total membership which would qualify by reason of work credits (A. 107), the union introduced evidence on this subject. That evidence showed that the entire swing shift (approximately 200 employees) worked overtime on 75 percent of the meeting nights (A. 150-153, 158-159). Thus, in all probability this entire group was eligible.[11]

Evidence was also introduced as to the Secretary of Labor's prior interpretations of the "reasonable qualifications" provision of Section 401(e). The Secretary has published an Interpretative Manual setting forth his viewpoint as to the proper interpretation of the statute, to assist unions in complying with the LMRDA (A. 112). Paragraph 422.250 of the Manual (A.204), captioned "Participation in Union Affairs," states a general principle that, absent unusual circumstances, an eligibility rule designed to assure participation in and familiarity with union affairs is a reasonable candidacy qualification:

> "Qualifications reasonably designed to assure that candidates have participated in the affairs of the union and are sufficiently familiar with the industry in which the union operates, would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reason-

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[11] The district court "estimated" that "at least 12%" of the swing shift qualified by reason of work credits (A. 38). It did not indicate how it derived this estimate, nor can we construct a rationale for it. On the undisputed evidence, it would appear that 100% of the swing shift qualified. The Secretary's brief (page 6), ignoring the "at least" in the district court's finding, incorrectly states that the "district court estimated that 24 of the 200 swing shift employees satisfied the meeting attendance requirement by reason of absences excused for overtime work." Building upon this incorrect statement, the Secretary's brief (page 23) declares that "nearly 90 percent" of the membership was ineligible. If the entire swing shift qualified, approximately 40 percent of the membership was eligible.

ableness of any of the qualifications, they are not to be considered unreasonable in themselves."

As one specific application of this general principle, the Manual declares that a requirement of 50 percent meeting attendance over a 24 month period (which is greater than the 21 month period involved in the instant case) is a reasonable candidacy qualification, except where attending presents "an unusual degree of difficulty for a significant proportion of the membership; as for example, where the local had an extensive geographical jurisdiction." Manual Par. 422.206 (A. 203). At trial, the Chief of petitioner's Elections Unit conceded that this exception for difficulty in attending is not applicable to the instant case (A. 115).

The Manual distinguishes 75 percent meeting attendance requirements which, it notes, have been judicially declared "unreasonable" absent extremely liberal excuse provisions for non-attendance. Manual, Par. 422.208 (A. 203-204).

In a series of opinion letters, the Secretary has advised that unions with meeting attendance requirements must provide excused absences to those who work during meetings. See, e.g., A. 196-197:

> "[I]f members must work during the time when meetings are held, a requirement of attendance at a given number of meetings may be unreasonable in its application, when there is not adequate provision for excused absences for members who are working at the time meetings are held."

See also A. 198-200.

The Interpretative Manual, in upholding 50 percent meeting attendance rules, does not state an exception for cases where only a small percentage attend (A. 203). Sometime in the mid-1960's, however, the Secretary instituted a lawsuit against a local of the Brotherhood of Railway Carmen on the theory that an otherwise reasonable rule *was* invalidated because only a small percentage attended. But

that lawsuit was withdrawn *only a few months prior to the election involved in the instant case.* In explaining the withdrawal, the Department of Labor stated that the Secretary had conducted "a general review of attendance requirements" and had concluded that a rule should *not* be invalidated simply because a small percentage actually qualify (A. 201-202):

> "The Department originally concluded that there was nothing patently unreasonable about this qualification on office holding, but that the rule was nevertheless of questionable validity because in operation only a few members of the local besides the incumbent officers had satisfied this attendance requirement. . . .
>
> "Subsequent to the institution of this action, a general review of attendance requirements as a qualification for office holding was held by the Secretary of Labor. Upon further consideration of this problem it was determined that measuring the reasonableness of a meeting attendance requirement solely in terms of the number of members adversely affected by its application in a particular election tended to unduly penalize the legitimate interest of a union in encouraging participation in the affairs of the union as well as obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization. Upon reexamination, therefore, it was concluded that *it would be less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office) as long as the requirement itself could be reasonably met by all members and was uniformly applied.*" (Emphasis added).

Thus, at the time of the election herein, the Secretary's view was that small percentage does not invalidate (A.

121). *He changed his mind again when he decided to institute the present action, as the Chief of his Elections Unit acknowledged at trial* (A. 122).

The Secretary introduced the expert testimony of his Director of Research, who testified that in his opinion meeting attendance requirements do not increase attendance, and that there are other ways in which members can become familiar with the responsibilities of union office. He acknowledged, however, that in expressing these opinions "I disagree with the Secretary" (A. 147) who, as noted above, has declared that meeting attendance rules serve legitimate union interests. The expert further acknowledged, in response to questioning by the district judge, that while he does "not personally care for" meeting attendance rules, they are "a reasonable way" to assure that candidates are familiar with the responsibilities of union office, provided they are "not too restrictive" (A. 149).

The expert also introduced a study he had prepared of the extent to which meeting attendance requirements for local union office are imposed by International Union Constitutions (A. 190). The study showed that the constitutions of International Unions having 25 percent of all of America's union members impose meeting attendance requirements as a candidacy qualification for local union office (A. 135). Another 7 percent of America's union members are in International Unions whose constitutions expressly leave the use of a meeting attendance requirement to local union option (A. 135). The remainder of the International Union Constitutions are silent on this subject, but the expert testified that within these International Unions there are locals whose *own* bylaws impose meeting attendance requirements (A. 137). It was his guess that "only a minority of Local Unions will have such a provision if it is not required by the National Constitution" (A. 143).

The union sought to introduce two exhibits showing that

in Steelworkers' locals generally, as in Local 6799, the meeting attendance requirement does not preclude contests for union office (A. 209, 210-212). The district court sustained the Government's objection to these exhibits, but only after eliciting a concession from Government counsel that the Government does not contend that the meeting attendance requirement has resulted in an insufficient number of candidates (A. 162-165).[12]

Opinion of the District Court

The district court rejected the union's argument that the Secretary was not entitled to litigate the reasonableness of the meeting attendance rule because it has not been challenged in the internal union proceedings. The court held that the Secretary may sue about any matter discovered in his investigation "conditioned upon the [union] having a reasonable time to make the corrections" (A. 166). But the court concluded that the meeting attendance rule is reasonable (A. 38):

> "The meeting attendance requirement is designed to increase attendance at meetings and insure candidates who have demonstrated interest in union problems, are familiar with them, and better qualified to serve as officers of the union. It is a reasonable requirement, because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision."

The district court found that the use of union facilities to mimeograph one presidential candidate's leaflets constituted a violation of Section 401(g), and accordingly or-

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[12] Government counsel's ultimate position was as follows (A. 165):

"No, we would not contend there should have been more nominations as to any one particular office.

"We only contend there should have been a broader base from which to nominate for any office."

dered a new election for the office of president only (A. 43-47).

Opinion of the Court of Appeals

The Ninth Circuit affirmed. It did not reach the reasonableness of the meeting attendance rule (A. 54, n. 7), for it held that the Secretary was not entitled to litigate that issue (A. 52-53):

> "[We] are convinced and therefore conclude that Congress intended to empower the Secretary to assert those violations that are fairly apparent from a member's protest to the union and no others."

The court believed that this conclusion follows "logically" from the fact that Congress included an exhaustion requirement in the statute, for "to allow the Secretary wide ranging power to urge 'any' violation would in effect nullify the exhaustion requirement" (A. 53). The court also believed that its conclusion reflected the correct effectuation of Congress' intention, and relied upon the following portions of this Court's decision in *Wirtz* v. *Glass Bottle Blowers Association*, 389 U.S. 463 (1968), as evidence of that intention (A. 53, n. 5, 54):

> "The stated commitment is to postpone government intervention until the union is afforded the opportunity to redress the violation."
>
> * * *
>
> "Title IV's special function in furthering the overall goals of the LMRDA is to insure 'free and democratic' elections. The legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs. The extensive and vigorous debate over Title IV manifested a conflict over the extent to which govern-

mental intervention in this most crucial aspect of internal union affairs was necessary or desirable. In the end there emerged a 'general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the court.' "

SUMMARY OF ARGUMENT

I

Section 402(a) makes exhaustion of union remedies a prerequisite to invocation of the Secretary of Labor's authority. But it does not expressly state whether, after a member has raised some matters within the union, the Secretary may proceed against wholly unrelated matters. "The question is one of statutory construction and must be answered by inference since there is lacking an explicit provision regarding the permissible scope of the Secretary's complaint." *Wirtz* v. *Laborers' Union,* 389 U.S. 477, 481 (1968). As we show, the Court of Appeals correctly held that the Secretary may not sue over matters about which the union did not receive fair notice from a member's internal union complaint.

Resolution of this issue requires an accommodation of the "intertwined objectives" (*Id.* at 484) underlying Title IV. On the one hand, Congress wanted to assure free and democratic elections. On the other, it sought to foster union self-government and minimize governmental interference.

Petitioner concedes that if *no* internal union complaint is made, the Secretary cannot thereafter sue no matter how egregious the statutory violations. Thus, Congress believed that there were values inherent in the exhaustion of union remedies so important as to outweigh the injury to the goal

of "free and democratic elections" resulting from Secretarial impotence. This choice was made consciously, over some Senators' objection that the sacrifice in effective enforcement would be too great.

Should a different result follow when a member exhausts as to one issue, but the Secretary wishes to sue about a wholly unrelated issue? There is no logical reason why Congress should have insisted on exhaustion, yet permit suit about matters not exhausted. But our demonstration need not rest on logic, for the same conclusion follows from an examination of the purposes which exhaustion was designed to serve.

(1) The overall purpose of the LMRDA was to assure that unions would be responsive to the wishes of the membership. Congress was unwilling to give the Secretary authority to seek renovation of every union rule which *he* thought undemocratic; rather Congress limited the Secretary's authority to those rules with which the *members* were dissatisfied—a dissatisfaction which would be manifested through the filing of internal union complaints. This purpose is hardly served if the Secretary, seizing upon a membership complaint about one problem, can challenge other aspects of union procedures with which the membership is content.

(2) Congress was anxious to encourage members' resort to internal union appeals procedures for the resolution of election problems, and to inject the Secretary and the courts only where these internal mechanisms proved incapable, or unwilling, to resolve problems brought before them. *Laborers' Union, supra,* 389 U.S. at 484; S. Rep. No. 187, 86th Cong. 1st Sess. 5, 7, 31 (1959). The Secretary's approach would wholly undermine this statutory purpose. Members would be under no obligation to present all their complaints to the union's judicial tribunal; and respect for these tribunals would be discouraged as members saw elections up-

held by these tribunals set aside by subsequent governmental action. Of course, when union tribunals have been given fair notice and an opportunity to correct, yet fail to do so, they invite the disrespect which subsequent governmental interference will engender. But where, as here, the union tribunal was not presented the issue, and had no opportunity to pass upon it, the undermining of membership confidence engendered by governmental action is wholly unwarranted.

(3) "Congress emphatically gave unions the primary responsibility for enforcing the Act . . ." *Wirtz* v. *Hotel Employees,* 391 U.S. 492, 498 (1968). Indeed, with 45,000 local unions in the United States, it is clear that absent effective self-policing by unions the statutory scheme would crumble. The Secretary is overburdened with his present caseload. If members learned that they need not present all their grievances to their union tribunals for correction, or if those tribunals ceased to function effectively, Title IV would fail. The danger that union tribunals will cease functioning effectively is real; having striven to resolve protests objectively and in compliance with Title IV, only to see the Secretary do an "end run" with issues never presented to them, these tribunals will quickly assume an attitude of "why bother?" The responsibilities which Congress so "emphatically" hoped would be borne by union tribunals will as emphatically be shucked if the Secretary persists in making a joke of internal union procedures. And if that happens, the Secretary is not equipped to take up the slack.

(4) Finally, Congress was anxious to assure prompt resolution of election disputes, and for that reason established time limits at each stage under Section 402. That timetable is destroyed if members can withhold some of their complaints from the union tribunal, only to have them raised for the first time by the Secretary months later.

These Congressional concerns were "regarded by Congress as critical to the statute's objective of fostering union

self-government." *Laborers' Union,* *supra,* 389 U.S. at 484. The key to their accommodation with the statutory goal of "free and democratic election"—as strongly intimated by this Court in *Wirtz* v. *Glass Bottle Blowers Association,* 389 U.S. 463, 470-473 (1968)—is to permit the Secretary to advance those issues of which the union tribunal had fair notice and an opportunity to correct, but not issues which were not presented to the union tribunal. The legislative history confirms that this is the result which Congress intended.

II

The Steelworkers' 50 percent meeting attendance rule is a "reasonable qualification" for candidacy. The rule serves legitimate union purposes—it encourages attendance at the union's official business meetings; requires dissidents to attend the meetings, thereby providing a check against unbridled and arbitrary control of the union's affairs by the incumbent officers; assures candidates who have demonstrated an interest in the union's affairs by the effect, a course in union management; and provides, in to union leadership. The rule does not disqualify any member from becoming a candidate; every member can qualify simply by devoting two hours, every other month, to union affairs. In practice, the rule does not prevent opposition to the incumbent union officers; here, all incumbents were challenged by rivals who qualified under the rule, and the same pattern exists throughout the Steelworkers' Union.

The fact that a relatively small percentage of the members choose to qualify themselves does not make the rule unreasonable. The point is that every member *can* qualify himself without difficulty, and thus the rule does not retard opposition to the incumbent leadership. Indeed, at the time this election was held, it was the Secretary of Labor's stated view that small percentage does not invalidate an otherwise reasonable meeting attendance rule; he changed his mind when he decided to institute this lawsuit.

The Union grants work credits to those who are working at the time the meeting is held, in order to assure that every member will be able to qualify. Indeed, the Secretary of Labor insists that such credit be given if meeting attendance rules are to be responsible. Thus, the granting of such credits does not invalidate the rule.

ARGUMENT

I. THE SECRETARY MAY NOT LITIGATE UNDER TITLE IV MATTERS WHICH WERE NOT RAISED WITHIN THE UNION

Section 402(a) makes the exhaustion of internal union remedies a prerequisite to the invocation of the Secretary's authority under Title IV. Section 402(b) then provides that the Secretary, upon receipt of a complaint from a member who has exhausted his union remedies pursuant to Section 402(a), shall investigate "such complaint" and, if he finds "a violation" which has not been remedied, he "shall . . . bring a civil action." The statute does not state, at least in literal terms, the extent to which the Secretary's authority to sue under Section 402(b) is limited to the matters exhausted by the member under Section 402(a). "The question is one of statutory construction and must be answered by inference since there is lacking an explicit provision regarding the permissible scope of the Secretary's complaint." *Wirtz* v. *Laborers' Union,* 389 U.S. 477, 481 (1968).

In *Laborers' Union,* a member complained within the union about the conduct of a run-off election. His complaint, however, was one which would have been equally applicable to the original election. The union treated the complaint narrowly, and ruled only with respect to the run-off. The member then complained to the Secretary, who instituted suit against the original election. The union argued that the Secretary was barred from challenging the

original election, because the member's internal union complaint had been directed only at the run-off. In response the Secretary argued that his powers under Section 402(b) extend to any violation of Title IV, even those which clearly were not raised within the union. This Court expressly declined to pass upon the Secretary's contention, finding that the member's internal union complaint had been sufficient to provide the union "fair notice" of the violation ultimately alleged by the Secretary (389 U.S. at 481-482):

> "On the facts of this case we think the Secretary is entitled to maintain his action challenging the June 8 election because respondent union had fair notice from the violation charged by Dial in his protest of the run-off election that the same unlawful conduct probably occurred at the earlier election as well. *We therefore need not consider and intimate no view on the merits of the Secretary's argument that a member's protest triggers a § 402 enforcement action in which the Secretary would be permitted to file suit challenging any violation of § 401 discovered in his investigation of the member's complaint.*" (Emphasis added).[13]

The present case squarely poses the issue which was left undecided in *Laborers' Union*. For here the Secretary concedes that the internal union complaint did not provide the union fair notice that its meeting attendance requirement was under challenge nor provide an opportunity for its correction.

Resolution of this issue requires an accommodation of the "intertwined objectives" (*Laborers' Union*, 389 U.S. at 484) inherent in Title IV. On the one hand, Congress wanted to assure "free and democratic elections." *Wirtz* v. *Glass Bottle Blowers Association*, 389 U.S. 463, 470-471 (1968); *Wirtz* v. *Hotel Employees*, 391 U.S. 492, 496

[13] See also *Wirtz* v. *Hotel Employees*, 391 U.S. 492, 495, n. 4 (1968), where the Court again found it unnecessary to decide this issue.

(1968). On the other, it sought to foster union self-government, and minimize Governmental interference. "[T]he exhaustion requirement was regarded by Congress as critical to the statute's objective of fostering union self-government." *Laborers' Union, supra,* 389 U.S. at 484. "Congress emphatically gave unions the primary responsibility for enforcing compliance with the Act. . . ." *Hotel Employees, supra,* 391 U.S. at 498.

Petitioner's brief ignores the second of these Congressional objectives, and argues on the premise that the sole Congressional objective was to assure that each and every election violation is subject to correction at the instance of the Secretary. That approach, of course, cannot be reconciled with the existence of the exhaustion requirement in Section 402(a). It is clear, and petitioner reluctantly concedes, that if *no* internal union complaint is made, the Secretary cannot thereafter sue no matter how egregious the statutory violations.[14] Nor can the Secretary cure the failure to exhaust by giving the union "notice" before suing, the panacea which is proposed in petitioner's brief (page 21). Plainly, Congress believed that there were values inherent in the exhaustion of union remedies so important as to outweigh the injury to the goal of "free and democratic elections" resulting from Secretarial impotence. Congress made this choice consciously, over the objection of a minority of Senators, led by Senator Goldwater, who argued vigorously that the exhaustion requirement would hinder effective enforcement of the statute. See, e.g., Cong. Rec. 16489, Senate, Aug. 20, 1959 (remarks of Sen. Goldwater); Senate Rep. No. 187, 86th Cong. 1st Sess., pp. 103-104 (Minority Views).

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[14] In such instances, the Secretary has the power to investigate under Section 601 of the Act, 29 U.S.C. § 521, a power which exists "without regard to the filing of a complaint by a union member. But when the Secretary investigates pursuant to § 601 without a member's complaint, his remedy is limited to disclosure of the violation discovered." *Laborers Union supra* 389 U.S. at 482, n. 5.

The question here is whether a different result should follow when a member exhausts as to one issue, but the Secretary wishes to sue as to a wholly unrelated issue. We will show herein that the objectives which Congress sought to accomplish by the exhaustion requirement would not be served by the Secretary's proposed construction of the statute. Before doing so, however, it is worth noting that the Secretary's construction is totally illogical. What possible motivation could Congress have had to interpose exhaustion as a prerequisite to Secretarial action, yet to permit exhaustion of a single issue to give the Secretary *carte blanche?* Petitioner suggests none, and none is apparent to us. If exhaustion is a prerequisite to suit—as surely it is—the required exhaustion must be a *relevant* exhaustion, i.e. it must be one which afforded the union fair notice of, and an opportunity to correct, the violations ultimately challenged in the lawsuit.

Our demonstration need not rest on logic alone. For it also follows from a recognition of the purposes which exhaustion was designed to serve. Those purposes are several, and we discussed them *seriatim.*

(1) The overriding purpose of the LMRDA was to assure that unions would be responsive to the wishes of the membership. Thus Congress was unwilling to give the Secretary authority to seek renovation of every union rule which *he* thought undemocratic; rather Congress limited the Secretary's authority to those rules with which the *members* were dissatisfied—a dissatisfaction which would be manifested by the filing of membership complaints under the internal union protest procedures. As petitioner's brief (page 20) recognizes, the exhaustion requirement was intended "to assure that the results of union elections will not be disturbed if they are satisfactory to all members of the Union." This purpose is hardly served if the Secretary, seizing upon a membership complaint about one problem,

can challenge other aspects of union procedures with which the membership is content.

This case furnishes a good example. The present Steelworkers meeting attendance rule is the product of rank-and-file delegate action taken over the objection of USWA's officers. Its application went wholly unchallenged in Local 6799's election. The only complainant —Nicholas Hantzis —was himself eligible under the rule, and was prepared to testify at trial that he considered the rule to serve important union purposes (pp. 6-7, n. 7, *supra*). He protested within the union because his opponent used union facilities to run off campaign literature—a protest which the Secretary admits evinced no dissatisfaction with the meeting attendance rule. Why, in these circumstances, should the Secretary be permitted to override the general membership satisfaction with the meeting attendance rule? The answer is that he is not entitled to do so, and that the exhaustion requirement was designed to preclude precisely such outside interference with union self-government.

(2) Congress was anxious, as part of its effort to promote union self-government, to preserve and stimulate the utilization of internal union appeals procedures for the resolution of election problems, and to inject the Secretary and the Courts only where those internal mechanisms proved incapable, or unwilling, to resolve problems brought before them. "By channeling members through the internal appellate processes, Congress hoped to accustom members to utilizing the remedies made available within their own organization. . . ." *Laborers' Union, supra,* 389 U.S. at 484. The Senate Report stated the "general approach of the bill" as follows:

> "A strong independent labor movement is a vital part of American institutions. . . . The overwhelming majority [of unions] are honestly and democratically run. *In providing remedies for existing evils the Sen-*

ate should be careful [*not*] *to undermine self-government within the labor movement. . . .*

"In acting on this bill the committee followed three principles:

"1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. (Moreover, in establishing and enforcing statutory standards *great care should be taken not to undermine union self-government. . . .*)" S. Rep. No. 187, 86th Cong. 1st Sess. (1959), pp. 5, 7 (emphasis ours).

This "general approach" was carried forward into the specific portion of the bill—Title IV—which dealt with union elections. The Senate Report, after listing the substantive requirements of Title IV, explained its enforcement in these terms:

"The foregoing provisions are to be enforced by the Secretary of Labor, upon complaint of any union member, through court action. . . . In filing a complaint *the member must show that he has pursued any remedies available to him within the union and any parent body in a timely manner.* This rule preserves a maximum amount of independence and self-government *by giving every international union the opportunity to correct improper local elections. If the member is denied relief* by the union or can obtain no decision from the union one way or the other within 3 months, he may complain to the Secretary. . . ." (S. Rep. No. 187, 86th Cong. 1st Sess. (1959), p. 31, emphasis added).

The Secretary's approach would wholly undermine this statutory purpose. Members would be under no obligation to present all their complaints to the union's judicial body.

Presenting only a single matter would suffice to give the Secretary *carte blanche*. Indeed, members would be motivated to withhold some issues to avoid the risk of an enlightened judicial opinion from the union's tribunal which might persuade the Secretary not to challenge the election.

Moreover, the Secretary's construction would weaken membership respect for union judicial procedures, rather than encourage such respect as Congress intended. Once a union's highest judicial body has upheld an election, respect will be lost if, as a result of government action, the election is set aside. It hardly matters whether the overruling results from an agreement with the Secretary to avoid suit or from a court order at the end of a suit. Either way, the membership will grow to feel that the union's judicial machinery is inadequate.[15] (The impact would be about the same as a confession of error by the Attorney General after he had won a case in this Court; the public would view it as evidence of this Court's misfeasance or malfeasance.) Of course, when union tribunals have been given fair notice and an opportunity to correct, yet fail to do so, they invite the disrespect which subsequent government interference will engender. *Cf. Laborers Union, supra.* But where, as here, the union tribunal was not presented the issue, and thus had no opportunity to pass upon it, the undermining of membership confidence engendered by governmental action is wholly unwarranted.

USWA's International Executive Board has compiled a commendable record of responsiveness to its members' election protests, providing remedial action in a majority of the case which come before it (*supra,* page 6). Congress did not intend that confidence in that tribunal be under-

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[15] Thus, the fact that the Secretary gives the union notice and an opportunity to correct, before suing about matters not raised before the union's judicial body, is not an adequate substitute for the exhaustion contemplated by Congress.

mined, as it will be if the Secretary's position is adopted by this Court.

(3) Congress looked upon union tribunals as the principal enforcement mechanisms under Title IV, with the Secretary of Labor to be used only where union tribunals failed to do their job. "Congress emphatically gave unions the primary responsibility for enforcing the Act. . . ." *Hotel Employees, supra,* 391 U.S. at 498. Indeed, reliance upon self-policing by unions is essential if the statutory scheme is not to tumble. There are 45,000 local unions in the United States (A. 137), each of which must conduct elections at least once every three years (Section 401(b), 29 U.S.C. § 481(b)). If international unions did not undertake to correct violations, or if members learned that they need not present all their claims to the unions for correction, the burden imposed upon the Secretary would bring the statutory mechanism to a grinding halt. Even with his present case load, the Secretary cannot effectively prosecute violations of Title IV.[16] If union tribunals ceased functioning effectively, or if members withheld issues from them, Title IV could perform no meaningful function.

The danger that union tribunals will cease functioning effectively is not unreal. This Court can well imagine the reaction of union tribunals which have striven to resolve the protests which come before them objectively and in compliance with Title IV's mandate, only to have the Secretary do an "end run" with issues never presented within the union. An attitude of "why bother?" sets in quickly. It is fair to say that the responsibilities which Congress so "emphatically" hoped would be borne by union tribunals will

[16] Thus, of the eight actions brought challenging 1967 local union elections within USWA, only three were tried before expiration of the 1967-1970 term of office. The Secretary simply lacked adequate personnel to prosecute the remainder promptly. In consequence, the officers allegedly elected in violation of Title IV were able to serve out their terms. See also *Wirtz* v. *Glass Bottle Blowers, supra.*

as emphatically be shucked if the Secretary persists in making a joke of internal union procedures. This result might be tolerable (even if directly contrary to the Congressionally-intended scheme) if the Secretary were equipped to assume the slack. The fact is that he is not, and that Congress "emphatically" did not intend that he should.

(4) Finally, Congress was anxious to assure prompt resolution of election disputes, and for that reason established time limits at each stage under Section 402. Promptness is destroyed if members can withhold some of their complaints from the union's judicial tribunal, only to have them raised for the first time by the Secretary months later.

The Congressional concerns enumerated above were "regarded by Congress as critical to the statute's objective of fostering union self-government." *Laborers' Union, supra,* 389 U.S. at 484. They must be accorded weight in determining "the permissible scope of the Secretary's complaint" (*Id.* at 481). The key to their accommodation with the statutory goal of "free and democratic elections" is found, we believe, in *Glass Bottle Blowers Association, supra:*

> "Title IV's special function in furthering the overall goals of the LMRDA is to insure 'free and democratic' elections. The legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections *without departing needlessly from its long standing policy against unnecessary governmental intrusion into internal union affairs.* The extensive and vigorous debate over Title IV manifested a conflict over the extent to which governmental intervention in this most crucial aspect of internal union affairs was necessary or desirable. In the end there emerged a 'general Congressional policy to allow unions great latitude in resolving their own internal controversies, and, *where that fails,* to utilize the agencies of government most familiar with union problems to aid in

bringing about a settlement through discussion before resort to the courts.' *Calhoon* v. *Harvey,* 379 U.S. 134, 140." (389 U.S. at 470-471; emphasis added; footnotes omitted).

* * *

"Even when an election violates [Title IV's] standards, the stated commitment is to postpone governmental intervention *until the union is afforded the opportunity to redress the violation.* This is the effect of the requirement that a complaining union member must first exhaust his internal union remedies before invoking the aid of the Secretary. 29 U.S.C. § 482(a). *And if the union denies the member relief* and he makes a timely complaint to the Secretary, the Secretary may not initiate an action until his own investigation *confirms* that a violation of Section 401 affected the challenged election. . . . Congress has explicitly told us that these provisions were designed to preserve a 'maximum amount of independence and self-government *by giving every international union the opportunity to correct improper local elections.*' S. Rep. No. 187, 86th Cong. 1st Sess. 21, I Leg. Hist. 417.

"But it is incorrect to read *these provisions circumscribing the* time and *basis for the Secretary's intervention* as somehow conditioning his right to relief *once that intervention has been properly invoked.* Such a construction would ignore the fact that Congress, although committed to minimal intervention, was obviously equally committed to making that intervention, *once warranted,* effective in carrying out the basic aim of Title IV." (389 U.S. at 472-473; emphasis added; footnote omitted).

As *Glass Bottle Blowers* suggests, the only appropriate accommodation of the "intertwined objectives" of Title IV is that the Secretary may advance those issues of which the union tribunal had "fair notice" and an opportunity to cor-

rect, but may not advance issues which were not presented to the union tribunal. The arguments advanced by petitioner for a contrary construction are fallacious, as we now show.

Petitioner's brief (pp. 15-16) argues that the reasoning of *Laborers' Union* supports its proposed construction. In particular, it relies upon this Court's statement that the scope of the Secretary's complaint cannot be "immutably fixed by the artfulness of a layman's complaint which often must be based on incomplete information," 389 U.S. at 482. Petitioner reasons (brief, p. 15):

> "As this Court recognized in *Laborers' International*, union members do not, as a rule, file carefully drafted complaints. 389 U.S. at 482. Consequently, if the complaint were the measure of the Secretary's powers, he would often be artificially limited, as here, by *technical flaws* in that document or by the individual member's failure to appreciate the scope or consequences of *the violation of which he is complaining.*" (Emphasis added).

But the instant case is not one where the deficiency was due to artless drafting, nor to technical flaws, nor to a failure on the part of the complaining member to appreciate "the scope or consequences of the violation of which he is complaining." Rather, it is one where the internal union complaint related to entirely different matters than that which the Secretary seeks to litigate. *Laborers' Union* cannot be stretched to cover this case. Not only did this Court expressly decline to do so, but its rationale depended entirely upon the union's receipt of "fair notice" from the internal union complaint (389 U.S. at 484-485):

> "It is true that the exhaustion requirement was regarded by Congress as critical to the statute's objective of fostering union self-government. By channeling members through the internal appellate processes, Con-

gress hoped to accustom members to utilizing the remedies made available within their own organization; *at the same time, however, unions were expected to provide responsible and responsive procedures for investigating and redressing members' election grievances.* These intertwined objectives are not disserved but furthered by permitting the Secretary to include in his complaint at least any § 401 violation he has discovered which the union had a fair opportunity to consider and redress in connection with a member's initial complaint.

"... Surely this is not the responsible union self-government contemplated by Congress in allowing the unions great latitude in resolving their own internal union controversies. *In default of respondent's action on a violation which it had a fair opportunity to consider and resolve in connection with Dial's protest,* the Secretary was entitled to seek relief from the court ..." (emphasis added).

Petitioner's brief (pp. 19-20) also attempts to denigrate the function to be performed by union tribunals. It insists that Section 402(a) did not endow unions with any "fact-finding or policy determining functions"; that Congress "has . . . not conferred any form of governmental authority over these disputes on the unions"; and that union appellate tribunals "tend to have an adversary interest in such disputes." Not surprisingly, these assertions are not accompanied by any citation of authority. For they run directly *counter* to the Congressional scheme. Congress *did* endow unions with fact-finding and policy determining functions, and "emphatically gave unions the primary responsibility for enforcing compliance with the Act . . ." *Hotel Employees, supra,* 391 U.S. at 498. And the assertion that union tribunals have an adversary interest is a "cheap shot" which is not only contrary to fact (the vast majority of cases, as here, involve complaints to international union tri-

bunals involving local union elections), but contrary to Congress' finding that "unions have made a commendable effort to correct internal abuses." S. Rep. No. 187, *supra*, page 7.

Petitioner's brief (pp. 14-15) argues that Congress' use of the words "a violation" in Section 402(b), rather than "such allegation" as appeared in a different proposed bill (S. 1002, 86th Cong. 1st Sess., 105 Cong. Rec. 2067), demonstrates a Congressional intention to permit the Secretary to sue about any matter disclosed by his investigation. This argument has already been rejected by this Court, which concluded in *Laborers' Union* that "there is lacking an explicit provision regarding the permissible scope of the Secretary's complaint" (389 U.S. at 481),[17] and in any event is a resort to literalism in a statute which this Court has said cannot be construed literally. *Glass Bottle Blowers Association, supra,* 389 U.S. at 468:

> "We have cautioned against a literal reading of Congressional labor legislation; such legislation is often the product of conflict and compromise between strongly held and opposed views, and its proper construction frequently requires consideration of its wording against the background of its legislative history and in the light of the general objectives Congress sought to achieve . . . The LMRDA is no exception."

Moreover, the characterization of S. 1002 as "a prior draft of the bill" which was ultimately enacted (petitioner's brief, page 14) is inaccurate. The language of what ultimately became Sections 402(a) and (b) of the Act was hardened into final form a year earlier, as Sections 302(a) and (b) of the Kennedy-Ives Bill (S. 3974, 85th Cong. 2nd Sess.). S. 1002 was a completely separate bill, introduced

[17] Petitioner's brief in *Laborers' Union* (at page 45) had urged precisely the same argument based upon the difference between Section 402(b) and the provisions of S. 1002.

after the language of S. 3974 had been fixed, containing a completely different procedure for regulating elections from that contained in S. 3974 and the Act; it proceeded from far different premises than those shared by the drafters of the Act; and it was not even before the Congress for consideration at the time the language of Section 402 was being considered. In these circumstances, the characterization of the final language as a conscious rejection of S. 1002's language is pure fiction, entitled to no weight in construing the statute. "The interpretation of statutes cannot safely be made to rest upon mute intermediate legislative maneuvers." *Trailmobile Co.* v. *Whirls,* 331 U.S. 40, 61 (1947).

Finally, petitioner's brief (page 21) suggests that the Secretary's notice to the union prior to suit, in which he invites the union to correct the violations found in his investigation, is an adequate substitute for exhaustion within the union. The simple answer is that this notice serves none of the functions which the exhaustion requirement was designed to serve. It does not limit the Secretary's power to matters with which the union's membership is dissatisfied; it does not encourage (indeed, it discourages) respect for the union's judicial tribunals; it does not place the principal responsibility for enforcement of Title IV upon the union's judicial tribunals; and it does not assure the prompt exposure and resolution of election grievances in accordance with the statutory time-table. If Congress had thought Secretarial notice as effective as exhaustion in serving the statutory purpose, it surely would not have structured the statute with the cumbersome exhaustion-plus-complaint procedure contained in Section 402. It would have been much simpler to construct a procedure—as was later provided in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5—in which the administrative agency must provide an opportunity for "conciliation" prior to the institution of legal proceedings, but exhaustion is not required. That Congress did not adopt such a procedure, but instead

required exhaustion, emphasizes the importance which Congress attached to minimizing governmental intrustion in union affairs. Congress' decision to keep "hands off" should not be construed out of existence.

The overwhelming majority of the lower courts have concluded, as we urge, that the Secretary may not sue about issues of which the union did not receive "fair notice" in the internal union proceedings.[18] We submit, for the reasons set forth above, that these decisions are correct.

II. THE MEETING ATTENDANCE REQUIREMENT IS REASONABLE

Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), provides that "every member in good standing shall be eligible to be a candidate and to hold office (subject to . . . reasonable qualifications uniformly applied)."

At issue in this case is the reasonableness of the meeting attendance requirement which the Constitution of Defendant Steelworkers imposes in the elections of officers of each of its 3,700 local unions (A. 156). The rule requires that, to be eligible for candidacy, a member must have attended half the regular meetings of his local union during the 36 months preceding the election, with credit given for meetings the member could not attend because of his Union activities or working hours. (A. 167).

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[18] Petitioner's brief (page 13, n. 3) cites three district court decisions favoring his construction, and one ("see, also") which is ambiguous. These are, we believe, the only decided cases which have not rejected petitioner's construction. A legion of decisions *have* rejected petitioner's construction. In addition to those cited in petitioner's brief (*ibid*), see *Wirtz* v. *Local Unions No. 9 etc.*, 366 F. 2d 911, 913-914 (10th Cir. 1966), vacated as moot, 387 U.S. 96 (1967); *Wirtz* v. *Hotel, Motel & Club Employees*, 381 F. 2d 500, 506(2d Cir. 1967), reversed on other grounds, 391 U.S. 492 (1968); *Wirtz* v. *Local 257, Glass Bottle Blowers*, 273 F. Supp. 746 (D.N.J. 1967); *Wirtz* v. *Local 174, American Federation of Musicians*, 272 F. Supp. 294 (ED. La. 1967); *Wirtz* v. *Local Union No. 406*, 254 F. Supp. 963 (E.D. La. 1966).

In this action, the Secretary of Labor is attacking the 1967 election at Local 6799 because the meeting attendance requirement was applied in that election. Actually, because Local 6799 was not formed until 1965, it had held only 21 regular meetings, so that the effect of the rule at this Local was to require attendance (or credit) at eleven meetings. Regular meetings were held once a month and lasted approximately two hours. The rule thus imposed upon members the obligation to devote about two hours to Union affairs every other month. Attendance was not difficult for any member; all of Local 6799's members work at a single plant, and the meeting hall is only a 15 minute drive from the plant.

All three district courts which have ruled on the validity of the Steelworkers' meeting attendance requirement have concluded that it is a "reasonable qualification" within the meaning of the LMRDA (*supra*, p. 4). In thus holding, these courts were actually agreeing with principles which the Secretary of Labor has enunciated as to the proper interpretation of the Act. The Secretary, who is vested with the major responsibility for enforcing the election provisions of the LMRDA, has published an Interpretative Manual declaring that, absent difficulties in attendance which admittedly are not present here, 50 percent meeting attendance requirements spanning two years are reasonable.[19] That viewpoint "is entitled to great weight" in construing the statute. *Wirtz* v. *Local 406, Operating Engineers*, 254 F. Supp. 962 (E.D.La. 1966); *United States* v. *American Trucking Assns.*, 310 U.S. 534 (1940); *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294 (1933).

We believe, as the Secretary's Interpretative Manual suggests and the district court held, that the rule applied in

[19] The Manual is silent as to the validity of a 50% meeting attendance requirement spanning 36 months, the period applicable to Steelworkers' local unions which, unlike Local 6799, are not newly formed. See *infra*, pp. 45-46.

the instant case is a reasonable candidacy requirement. To further support our claim, we show herein that:

(A) The rule is designed to accomplish legitimate union objectives—objectives which the Secretary of Labor repeatedly has recognized validate an eligibility requirement;

(B) The purpose of Title IV of the LMRDA was to eradicate an evil which Congress found intolerable —that incumbents were able to keep themselves entrenched through a series of undemocratic devices, including eligibility requirements which disqualified all or virtually all potential opponents—and the meeting attendance rule in this case does not fit the category of evil against which Congress legislated; and

(C) The arguments advanced by petitioner for striking down this rule—and particularly the reliance on the small percentage of members who actually qualified—do not warrant invalidating the rule.

A. The Steelworkers' Meeting Attendance Rule Is Designed to Accomplish Legitimate Union Purposes

Prior to the institution of this action, defendant International explained to representatives of the Secretary of Labor the three reasons why it desired retention of the meeting attendance rule.

(1) Defendant International has an institutional interest in encouraging sufficient attendance at local union meetings to assure that there is a check upon the unbridled control of the Local's affairs by the incumbent officers. The regular meeting is the place where the official business of the Local is conducted, where its policies are determined, and where the decisions are made on how its treasury is to be spent. Defendant International considers it essential that sufficient members attend to prevent the incumbent local union officers from making these decisions without effective

membership control. Since there is generally apathy among workingmen about attending union meetings (A. 145-146), International regards some encouragement as essential to secure membership attendance. The eligibility requirement is uniquely well suited to that purpose, for it compels those who are dissatisfied with their incumbent leadership (and who wish to challenge that leadership at the next election) to attend the meetings.

Obviously the rule had its intended effect at Local 6799. Average attendance at meetings was 70 (A. 16-17, 37).[20] Since there are only 11 officers, this means that on the average nearly 60 non-officers attended each month. The officers were thus denied any opportunity to exercise dictatorial control. Moreover, when the 1967 elections were held, each of the incumbent officers was challenged by one or more opponents who satisfied the meeting attendance requirements.

The Secretary of Labor, in a series of opinion letters, has affirmed that meeting attendance requirements are "a reasonable means of encouraging participation in the affairs of the union." (A 196-197, 194-195, 198-200, 201-202).

(2) Defendant International also has an institutional desire to assure that those who seek office in its locals have demonstrated at least minimal interest in the union's affairs. The validity of that purpose was recognized in *Goldberg* v. *Amarillo General Drivers,* 214 F. Supp. 74 (N.D. Tex., 1963):

> "It is true enough that a union organization has the right to exercise proper discipline of members and prescribe conditions which may be tests of good faith or designed for tokens of interest in the welfare of the union, such as an extended period of membership, *or regular attendance at meetings . . .*"

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[20] The meetings were held in two sections, to accommodate the fact that different members worked different shifts, but the two sections constituted a single meeting. The average attendance figure represents the total of those attending the day shift and night shift sections.

Likewise, the Secretary of Labor has attested that unions have a "legitimate interest" in "obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization." (A. 194-195, 201-202).

(3) Finally, International desires that those who obtain local union office have a working knowledge of the union's affairs, so that they are at least minimally competent to perform the myriad responsibilities which are imposed by International's Constitution and by the growing number of federal laws regulating union conduct.[21] Attendance at meetings is the simplest and most effective way to assure that members acquire that knowledge, for that is where the local's business is discussed, debated and transacted.

The Secretary of Labor has recognized the reasonableness of eligibility requirements which assure that members are familiar with the union's problems (A. 204). Likewise, this Court appears to have viewed with approval a rule requiring attendance at classes in union management as a prerequisite to candidacy. *Wirtz* v. *Hotel, Motel & Club Employees,* 391 U.S. 492, 505 (1968). The regular meetings are *this* Union's classes in union management. Manifestly, it would be prohibitively expensive, as well as redundant, for International to conduct a separate course in union management for the members at each of its 3,700

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[21] See, e.g., Titles II and V of the LMRDA, 29 U.S.C. §§431-432 and 501-504; Section 8(b) of the LMRA, 29 U.S.C. §158(b); Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e); and the judicially created "duty of fair representation," *Vaca* v. *Sipes,* 386 U.S. 171 (1966). For a particularly lively description of the responsibilities which rest upon the shoulders of a Steelworkers' local union president, see the lead article in *The Wall Street Journal* of October 24, 1969, at page 1, entitled "How Big Teeny Kranz, Local Union President, Battles for His Troops: He Talks Tough, Works Hard On Problems at Steel Mill." In the 1970 elections, Mr. Kranz suffered the fate of many Steelworkers local union officers: he was defeated by an opponent who qualified under the meeting attendance rule.

local unions, when the local union meetings already constitute precisely such a course.

B. The Landrum-Griffin Act Was Not Enacted to Strike Down the Steelworkers' Meeting Attendance Rule

The LMRDA, more popularly known as the "Landrum-Griffin Act," was enacted in 1959 to eradicate certain intolerable evils which had been disclosed in the McClellan Committee hearings relating to the management of a few unions. Congress made clear its view that "the overwhelming majority" of unions are "honestly and democratically run," and emphasized that the Act was being passed to cure evils found in a handful of unions which had abused their public trust. See, e.g., S. Rep. No. 187, 86th Cong. 1st Sess. (1959), page 5.

The most publicized of these evils related to racketeering and gangsterism, and much of the Act is devoted to eliminating these blights. Congress also found, however, that a few unions had so structured their election machinery that it was impossible to remove entrenched incumbents. To cure this problem, Congress enacted Title IV, the "Elections" section of the Act.

Title IV does not purport to regulate every detail of union elections. Indeed, Congress made clear that it did *not* wish to impose any inflexible rules which would hinder diversity in the administration of democratic election procedures; rather, its object was to enunciate certain broad principles of fairness, within which unions could mold specific procedures designed to accommodate their particular needs and circumstances. See, e.g., S. Rep. No. 187, 86th Cong. 1st Sess., 5-7 (1959); *Wirtz* v. *Local 153, Glass Bottle Blowers*, 389 U.S. 463, 471 (1968). Congress did not intend to "dictate to the Unions what their constitution and bylaws procedure shall be in conducting their elections" or to "impos[e] upon Unions [its] notions of what an election straightjacket should be," 105 Cong. Rec. 6741 (April 25, 1959; Remarks of Sen. Morse).

One of the broad principles enunciated in Title IV was the right of members to be candidates subject to "reasonable qualifications uniformly imposed." No definition of reasonableness was supplied. But in light of the broad objectives of the Act, it is plain that a rule would be unreasonable if its effect was to preclude opposition to incumbent leadership, i.e. if it disqualified the dissident elements of the membership from challenging incumbents.

That is, indeed, how this Court interpreted the clause in *Wirtz* v. *Hotel Employees,* 391 U.S. 492. The case involved the validity of a union bylaw allowing only those who had held prior office in the union to run for higher office. The Court noted that only 1 percent of the members had held prior office; that many of these had been appointed by the incumbents to fill vacancies, thus "enabl[ing] the incumbent group to qualify members for elective office by a practice not available to dissidents"; and that in practice endorsement by the incumbent group was necessary to get elected to lower office, thus making it impossible for dissidents ever to qualify to run for higher office. The Court declared that "control by incumbents through devices which operate in the manner of this bylaw is precisely what Congress legislated against in the LMRDA." 391 U.S. at 505. More generally, the Court stated:

> "Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents." 391 U.S. at 499.

It is difficult to see how this legislative objective is thwarted by the meeting attendance rule involved in the instant case. The rule disqualifies no-one. Every member can qualify by the non-burdensome step of devoting two

hours, every other month, to his union's affairs. In practice, the rule does not entrench incumbent leadership. Not only were the incumbents challenged by qualified opponents in the instant case, but that same effect is observable throughout the Steelworkers' union. (A. 209-212). Indeed, Government counsel conceded that the Government does not contend that the rule resulted in an insufficient number of candidates (A. 165). Moreover, the rule actually fosters the objectives of the Act, for by requiring dissidents to attend local union meetings, it assures that incumbents cannot administer the affairs of the union in an unbridled or arbitrary manner.

Furthermore, the widespread incidence of meeting attendance requirements in union elections strengthens the view that Congress did not intend their abolition. This Court has noted, with respect to another provision of the Act, that Congress did not intend to outlaw provisions in widespread use, but only those employed by the small minority of unions having undemocratic procedures, *Musicians v. Wittstein*, 379 U.S. 171, 178 (1964). It is hardly likely that Congress—having heard no testimony of abuses stemming from meeting attendance rules, and making no mention of them in the legislative history—intended to strike down so widespread a practice by its insistence that candidacy qualifications be "reasonable."

Of course, a particular meeting attendance rule may be so harsh, or its application so unfair, as to have the effect of entrenching incumbent leadership. Indeed, there have been four cases in which such a finding was made. These cases are so unlike the instant case that, by contrast, they prove the validity of the Steelworkers' rule. For the convenience of the Court, we have summarized these cases in an appendix to this brief. In these cases, the rules were much harsher than that in the instant case; they favored

incumbents, who were *paid* to attend meetings[22]; and their effect was to leave all or most of the incumbents without opposition.

C. Petitioner's Objections to the Steelworkers' Meeting Attendance Rule Are Without Merit

At the outset of this litigation, petitioner advanced numerous objections to the meeting attendance rule as it was applied in Local 6799's election. Most of these were factually incorrect, were refuted at trial, were rejected by the district court, and were abandoned on appeal. By a process of elimination, there appear to be three remaining grounds of attack:

(1) The rule is unreasonable because only a small percentage of the members qualified;

(2) The rule is unreasonable because some members got credit for working during meetings; and

(3) The rule is unreasonable because of the three-year period which, petitioner alleges, is apt to reduce the number qualifying.

These contentions are invalid on both factual and legal grounds.

(1) *The Percentage Qualifying*

Petitioner's principal contention is that the rule is "unreasonable" because only a small percentage of the members actually qualified. At the outset, it is well to note that petitioner's factual assumption is probably wrong. When this suit was instituted, the Secretary was under the erroneous impression that only 6.3 percent of the members were eligible (A. 189). This figure represented the number who actually attended eleven meetings, but totally overlooked the many members who might have qualified by reason of a combination of meeting attendance and work credits. When work credits are taken into account, the only per-

[22] In the instant case, incumbents were *not* paid for attending meetings (Record in the Court of Appeals, pp. 114-115).

missible conclusion on this record is that approximately 40 percent of the members were eligible (see page 10, n. 11, *supra*).

In any event, whatever the percentage who qualified, we submit it is irrelevant to the reasonableness of *this* rule. The point is (as the district court found) that every member *could have* qualified, simply by attending half the meetings. This rule, thus, is unlike those which *prevent* members from qualifying who wish to do so, e.g. the "prior office holding" rule declared invalid by this Court in *Wirtz* v. *Hotel Employees*. It is fair to say that the meeting attendance rule disqualifies no-one. Members disqualify themselves by their unwillingness to devote two hours every other month to union affairs.

The Secretary of Labor has repeatedly flip-flopped on the question whether the percentage qualifying is relevant in determining the validity of an otherwise reasonable meeting attendance rule (A. 116-123). We believe the Secretary's conclusion in late 1966, reached after "a general review of attendance requirements as a qualification for office holding" (A. 202), clearly represents the correct interpretation of the Act. That conclusion (which was still the Secretary's view at the time the instant election was conducted) was as follows (A. 202):

"[M]easuring the reasonableness of a meeting attendance requirement solely in terms of the number of members adversely affected by its application in a particular election tended to unduly penalize the legitimate interest of a union in encouraging participation in the affairs of the union as well as obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization. Upon reexamination, therefore, it was concluded that *it would be less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office) as long as the require-*

ment itself could be reasonably met by all members and was uniformly applied." (Emphasis added.)

This was likewise the holding in *Martin* v. *Lodge 636, Boilermakers,* 245 F. Supp. 375 (W.D. Pa. 1963). The rule required attendance at one meeting in each of the five quarters preceding election. Of 175 members, only 14 qualified. The court found the rule reasonable, noting that attendance was not burdensome, and that to invalidate the rule "would hold in effect that there can be no attendance requirement whatever in this union."

We would add but one other point, unique perhaps to the Steelworkers. If percentages are determinative, defendant International is confronted with an unmanagable administrative burden. There is no way it can feasibly determine, in advance, which of its 3,700 locals may apply the rule and which may not. The adoption of any arbitrary percentage figure will leave International no choice but to abandon the rule altogether, at a sacrifice of the substantial values which it believes inhere in the rule.

(2) *Credit for Working*

Petitioner contends (brief, p. 25) that the union "is not faithful to its own premise" because credit is given to members who work during a meeting. This contention is, to us, quite startling. We are startled because it is the Secretary who has consistently emphasized that unions with meeting attendance requirements must give credit to those who work during the meeting (*supra,* page 11).

Indeed, it is perfectly clear that the Secretary would have taken an even dimmer view of the rule if the union had *not* provided credit to those who worked during meetings (A. 102). In short, the union was being faithful to the *Secretary's* own premise, by providing credit to those who worked during meetings.

The meeting attendance rule is a reasonable rule designed to achieve legitimate purposes. The work credit does not

invalidate the rule, but is a practical adjustment made to assure that every member is able to qualify to run for union office. In the Steelworkers Union, every member *is* able to qualify.

(3) *The 36 Month Period*

While the Secretary's Interpretative Manual approves 50 percent meeting attendance requirements spanning one or two years (A. 203), it is silent as to the validity of a three-year rule. Of course, in this particular case, because the local union was new, the rule spanned less than two years, and this case falls directly under the Manual. Nevertheless, we shall discuss briefly why even a three-year rule is reasonable (as the district court held, A. 46).

The Secretary's representatives argued to International that a three-year rule "would be more apt to make it more difficult for Union members to qualify for Union office" (A. 94). This proposition is hardly self-evident, and it certainly was not proved in this case. Since only 50 percent attendance is required, it is possible that more members might qualify under a three-year rule than under a two-year rule (e.g., if they attended heavily in the first year but only sporadically thereafter). We think it more probable that the length of the period has no significant impact on the number qualifying. That was the view of the Solicitor of Labor, who reasoned that those interested in union affairs would qualify no matter how long the period, while those not interested in union affairs would not qualify no matter how short the period (A. 101). The Solicitor's estimate is corroborated at Local 6799. The number attending half the meetings does not vary substantially when the period is reduced.[23]

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[23] 36 members attended half the meetings over the preceding 21 months. Had the rule been limited to the preceding 12 months, 43 members would have attended half the meetings. Had the rule been limited to the preceding 6 months, 45 members would have attended half the meetings. (D. Ex I.)

Moreover, one of the principal purposes of the rule—to assure membership attendance at meetings and a check against unbridled control of meetings by the incumbent officers—would be lost if the rule were shortened. The term of office is three years (A. 156). If the attendance period were shortened, there would be no incentive for non-officers to attend at the beginning of a term.

We submit that petitioner has made no showing which would warrant treating three-year rules differently from two-year rules under the Act. Indeed, as we have shown, a three-year rule is *more* reasonable in the Steelworkers, because the term of office is three years. And since the rule was extended from two years to three by rank-and-file delegate action, over the objection of USWA's officers, it can hardly be said that its imposition is undemocratic.

CONCLUSION

For the reasons set forth hereinabove, the decision below should be affirmed.

Respectfully submitted,

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APPENDIX

CASES IN WHICH MEETING ATTENDANCE RULES HAVE BEEN HELD UNREASONABLE

There are four decided cases in which particular meeting attendance requirements have been held unreasonable. Three cases involving the Glass Bottle Blowers' 75 percent meeting attendance rule:

Wirtz v. *Local 153, Glass Bottle Blowers Assn.*, 244 F. Supp. 745 (W.D. Pa. 1965), affirmed 405 F. 2d 176 (3rd Cir., 1968).

Wirtz v. *Local 66, Glass Bottle Blowers Assn.*, 268 F. Supp. 33 (W.D. Pa. 1967).

Wirtz v. *Local 262, Glass Bottle Blowers Assn.*, 290 F. Supp. 965 (N.D. Cal., 1968).

The fourth case involved a union rule which required members to have attended one meeting in *each* of the 13 quarters preceding election plus the nominating meeting:

Wirtz v. *Independent Workers Union,* 272 F. Supp. 31 (M.D. Fla., 1967).

We set forth below a summary of each of these cases.

Wirtz v. *Local 153, Glass Bottle Blowers Assn.* The rule required 75 percent meeting attendance, but gave credit for working *if the member notified the union within 72 hours after the meeting that he had been working during the meeting.* Of 500 members, at most 11 were eligible (of these, the status of two was in doubt). There were 10 offices to be fillled. No qualified candidates were nominated for four of the offices and they had to be filled by appointment. The court rejected as "obviously untenable" the notion that meeting attendance requirements are inherently unreasonable, but agreed with the Secretary that the rule before it went "too far", citing the combination of three

factors: (1) 75 percent was too high; (2) the excuse provision was too rigid; and (3) only a "handful" of members qualified. The court summarized its holding: "We conclude that 75 is too high a percentage when combined with the strict rule regarding excuses." The court suggested, as possible guidelines, that the rule should not be so strict that it prevents qualification by at least twice as many members as there are offices, or by 10 percent of the members.

Wirtz v. *Local 66, Glass Bottle Blowers.* The rule was identical to that in the *Local 153* case, and the same judge decided that it was unreasonable, relying upon his decision in the *Local 153* case.

Wirtz v. *Local 262, Glass Bottle Blowers.* The rule required attendance at 75 percent of meetings during *each year* since the last election, and members could receive credit for excused absences (work, illness or accident) only if they brought them to the Union's attention within 72 hours after the meeting. The Union had 568 members, of whom 10 qualified. Eight of these 10 were incumbents who were *paid* to attend the meetings. There were 9 offices to be filled; two candidates ran for President, and the other 8 eligible members ran uncontested for the 8 remaining offices. The court stated that in "holding the 75 percent meeting requirement qualification to be unreasonable" it had considered the following factors: percentage of meeting required; frequency of meetings held; period of time involved; allowances for excused absences; and the effects of the requirement. The court also noted that no other union had a 75 percent meeting attendance requirement. It stated that its holding of unreasonableness was "buttressed" by the requirement that 75 percent be attained in *each* year.

Wirtz v. *Independent Workers Union.* The rule required attendance at one meeting in each quarter of the preceding three calendar years, plus attendance at one meeting during the quarter preceding the election, plus attendance at the nominating meeting. (For certain lesser offices, the rule

required attendance in each quarter during only one preceding calendar year, rather than three, but was in other respects the same). Incumbent officers were paid to attend meetings. Of 1,600 members, 11 met the three-year requirement for higher office, and 13 met the one-year requirement for lesser office. Several persons were nominated for each office. The incumbent officers ruled on eligibility, and declared all of their opponents ineligible except one candidate for Vice-President. With that one exception, the incumbents ran unopposed. The court stated that meeting attendance requirements are not *per se* unreasonable, but it declared the rule unreasonable in the circumstances of the case because:

(1) No announcement was ever made that the attendance register would be used to determine eligibility;

(2) "[T]here is abundant evidence that . . . many members refused, neglected or otherwise failed to sign" the attendance register;

(3) There was no provision for receiving new nominations after it developed that all nominees except incumbents were ineligible to run for 3 of the 4 offices;

(4) Incumbent officers were *paid* to attend meetings, thus the effect of the rule "was plainly suited to cultivate entrenched management of the defendant union and fell well short of a rightful measure of democratic unionism";

(5) The rule was too severe, and disqualified more than 99 percent of the members;

(6) The requirement that members attend in *each* quarter for 3 preceding calendar years meant that a member would have to decide 3½ years in advance of the election that he wanted to be a candidate. "Standing alone this would present a serious question as to reasonableness; when the effect noted above results, the requirement is plainly unreasonable."

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HODGSON, SECRETARY OF LABOR *v.* LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL–CIO, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 655. Argued March 23, 1971—Decided June 14, 1971

Failure of labor union member's election complaint to include an objection to meeting attendance rule during his pursuit of internal union remedies when the member was aware of the existence of the rule bars the Secretary of Labor from later challenging that rule in an action under § 402 of the Labor-Management Reporting and Disclosure Act, which provides that once a member challenging an election has exhausted his internal union remedies and filed a complaint with the Secretary of Labor, the Secretary "shall investigate such complaint and, if he finds probable cause to believe that a violation . . . has occurred and has not been remedied, he shall . . . bring a civil action against the labor organization." Pp. 3–9.

426 F. 2d 969, affirmed.

MARSHALL, J., delivered the opinion of the Court, in which BURGER, C. J., and BLACK, DOUGLAS, HARLAN, STEWART, and BLACKMUN, JJ., joined. BRENNAN and WHITE, JJ., filed dissenting opinions.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 655.—October Term, 1970

James D. Hodgson, Secretary of Labor, Petitioner, *v.* Local Union 6799, United Steelworkers of America, AFL–CIO, et al.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June 14, 1971]

Mr. Justice Marshall delivered the opinion of the Court.

Petitioner, the Secretary of Labor, instituted this action under § 402b of the Labor Management Reporting and Disclosure Act of 1959, against Local 6799, United Steelworkers of America, to set aside a general election of officers conducted by the union.[1] The lawsuit arose after Nicholas Hantzis, an unsuccessful candidate for president of the local, protested the election to both the local and international union organizations. His protest concerned several matters including the use of union facilities to prepare campaign materials for the incumbent president who was re-elected.[2]

[1] The United Steelworkers of America, an international union under which Local 6799 is chartered, intervened as a party defendant.

[2] Hantzis' written protest consisted of a letter to the International Union which purported to describe the election's operation. Since the letter did not make specific allegations, it is difficult precisely to define Hantzis' objections. However, in addition, to his general charge that Union machinery had been used to aid incumbents, Hantzis also protested several procedural matters including the

After failing to obtain relief through the internal procedures of either union organization, Hantzis filed a complaint with the Secretary of Labor pursuant to § 402a of the Act, 29 U. S. C. § 482a. The complaint repeated the charge that union facilities had been used to promote the candidacy of the incumbent president and raised, for the first time, an additional objection concerning a meeting attendance requirement imposed as a condition of candidacy for union office.[3] At no time during his internal union protests did Hantzis challenge the attendance requirement.

Following an investigation of the complaint, the Secretary concluded that union facilities had been used improperly to aid the re-election of the incumbent president in violation of § 401g of the Act, 29 U. S. C. § 481g. The Secretary also concluded that § 401e had been violated because the meeting attendance requirement had not been uniformly administered and because the requirement itself was not a reasonable qualification on the right of union members to hold office. Respondents were advised of these conclusions and were asked to take voluntary remedial action. When they failed to comply with the request, the Secretary brought this proceeding in the District Court for the Central District of California.

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methods used to nominate and swear in officers. The Secretary of Labor subsequently concluded that none of these procedural matters constituted a violation of the Act.

[3] The attendance rule, which is contained in the constitution of the International Union, provides that a union member, in order to be eligible for election as a local union officer or grievance committeeman, must have attended at least one-half of the regular meetings of his local Union for 36 months previous to the election unless union activities or working hours prevented his attendance. It is unclear from Hantzis' complaint whether he objected to the attendance rule itself or to the way in which the rule was administered during the election. Hantzis himself qualified under the rule.

The District Court held that § 401g had been violated by the use of union facilities for the benefit of the incumbent president's campaign and ordered a new election for the office of president.[4] The District Court also held, however, that the meeting attendance rule was reasonable and that Local 6799 had not violated § 401e by imposing the rule as a qualification on candidacies for union office.

On appeal the Court of Appeals for the Ninth Circuit affirmed without reaching the question whether the attendance requirement was reasonable. In the court's view, Hantzis' failure to challenge the requirement during his pursuit of internal union remedies precluded the Secretary from later raising the issue. The court reasoned that since the Act requires that union members protesting the conduct of elections exhaust their internal union remedies before complaining to the Secretary, Congress intended to empower the Secretary to assert only ". . . those violations that are fairly apparent from a member's protest to the union . . . ." 426 F. 2d 969, 971.

Because the case presents an important issue concerning the scope of the Secretary's authority under the Act, we granted certiorari, 400 U. S. 940. We conclude that Hantzis' failure to object to the attendance rule during pursuit of his internal union remedies bars the Secretary from later challenging the rule in a § 402b action. We therefore affirm the decision of the Court of Appeals.

Section 402 provides that once a member challenging an election has exhausted his internal union remedies and filed a complaint with the Secretary of Labor, the Secretary "shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall,

[4] This facet of the District Court's decision is not challenged here.

within sixty days after the filing of such complaint, bring a civil action against the labor organization . . . ." [5] At the outset, petitioner contends that the language of

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[5] "SEC. 402. (a) A member of a labor organization—

"(1) who has exhausted the remedies avaliable under the constitution and bylaws of such organization and of any parent body or,

"(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation.

"may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

"(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance wtih the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

"(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

"(1) that an election has not been held within the time prescribed by section 401, or

"(2) that the violation of section 401 may have affected the outcome of an election,

"the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the

the section empowers the Secretary to investigate and litigate any and all violations which may have affected the outcome of an election once a union member has exhausted his internal union remedies concerning any violation which occurred during that election. Emphasis is placed on the fact that the Secretary is authorized to act if his investigation uncovers "a violation"—this, it is said, means that the Secretary is not limited to seeking redress only in respect of the claims earlier presented by the union member to his union. However, the statutory language is not so devoid of ambiguity that it alone can bear the weight of the Secretary's expansive view of his authority. While the words "a violation" might mean "any violation whatever revealed by the investigation," the words are susceptible of other readings. In particular, they can fairly be read to mean, "any of the violations raised by the union member during his internal union election protest." In *Wirtz* v. *Laborers' Union*, 389 U. S. 477 (1968), this Court noted that the range of the Secretary's authority under § 402b must be determined "by inference since there is lacking an explicit provision regarding the permissible scope of the Secretary's complaint," 389 U. S. 477, 481. We must, therefore, examine the legislative history and statutory policies behind § 402 and the rest of the Act to decide the issue presented by this case.

Examination of the relevant legislative materials reveals a clear congressional concern for the need to remedy

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officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

"(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal."

abuses in union elections without departing needlessly from the longstanding congressional policy against unnecessary governmental interference with internal union affairs, *Wirtz* v. *Glass Bottle Blowers Association*, 389 U. S. 463, 470–471 (1968). The introduction to the Senate report accompanying the Act summarizes the general objectives of Congress:

> "A strong independent labor movement is a vital part of American institutions. The shocking abuses revealed by recent investigations have been confined to a few unions. The overwhelming majority are honestly and democratically run. In providing remedies for existing evils the Senate should be careful neither to undermine self-government within the labor movement nor to weaken unions in their role as the bargaining representatives of employees." S. Rep. No. 187, 86th Cong., 1st Sess., p. 5 (1959).

The requirement of § 402a, that a union member first seek redress of alleged election violations within the union before enlisting the aid of the Secretary, was similarly designed to harmonize the need to eliminate election abuses with a desire to avoid unnecessary governmental intervention. The same Senate Report, in reference to Title IV of the Act and to the exhaustion requirement, states:

> "In filing a complaint the member must show that he has pursued any remedies available to him within the union and any parent body in a timely fashion. This rule preserves a maximum amount of independance and self-government by giving every international union the opportunity to correct improper local elections." *Id.*, at 21.

Plainly Congress intended to foster a situation in which the unions themselves could remedy as many election

violations as possible without the government's ever becoming involved. Achieving this objective would not only preserve and strengthen unions as self-regulating institutions, but also avoid unnecessary expenditure of the limited resources of the Secretary of Labor.

Petitioner contends that the congressional concerns underpinning the exhaustion requirement were in fact adequately served in this case, because the election in question was actually protested by a union member within the union, and because the union was later given a chance to remedy specific violations before being taken to court by the Secretary. In this view, it is irrelevant that Hantzis himself did focus his election challenge on the attendance requirement when seeking internal union remedies. In sum, the Secretary urges that § 402 (b) empowers him to act so long as a union member objects in any way to an election and so long as the union is given the opportunity to remedy voluntarily any violations which the Secretary determines may have affected the outcome of that election, regardless whether the member objected to the violations during his protest to the union.

However, under petitioner's limited view of congressional objectives, the exhaustion requirement of § 402 (a) is left with virtually no purpose or part to play in the statutory scheme. "Exhaustion" would be accomplished given any sort of protest within the union, no matter how remote the complaint made there from the alleged violation later litigated. The obvious purpose of an exhaustion requirement is not met when the union, during "exhaustion," is given no notice of the defects to be cured. Indeed, the primary objective of the exhaustion requirement is to preserve the vitality of internal union mechanisms for resolving election disputes—mechanisms to decide complaints brought by members of the union

themselves. To accept petitioner's contention that a union member, who is aware of the facts underlying an alleged violation, need not first protest this violation to his union before complaining to the Secretary would be needlessly to weaken union self-government. Plainly petitioner's approach slights the interest in protecting union self-regulation and is out of harmony with the congressional purpose reflected in § 402 (a).

Of course, any interpretation of the exhaustion requirement must reflect the needs of rank and file union members—those people the requirement is designed ultimately to serve. We are not unmindful that union members may use broad or imprecise language in framing their internal union protests and that members will often lack the necessary information to be aware of the existence or scope of many election violations. Union democracy is far too important to permit these deficiencies to foreclose relief from election violations; and in determining whether the exhaustion requirement of § 402a has been satisfied, courts should impose a heavy burden on the union to show that it could not in any way discern that a member was complaining of the violation in question.[8] But when a union member is aware of the facts supporting an alleged election violation, the member must, in some discernible fashion, indicate to his Union his dissatisfaction with those facts if he is to meet the exhaustion requirement.

In this case, it is clear that the protesting member knew of the existence of the meeting attendance provision and that his election protests to the local and international

[8] For much the same reasons, members should not be held to procedural niceties while seeking redress within their union, and exhaustion is not required when internal union remedies are unnecessarily complex or otherwise operate to confuse or inhibit union protestors.

unions concerned matters wholly unrelated to the rule. We therefore hold that internal union remedies were not properly exhausted and that the Secretary was barred from litigating the claim. Given this holding, we do not reach the question whether the meeting attendance rule itself is reasonable.

The judgment is

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 655.—October Term, 1970

James D. Hodgson, Secretary of Labor, Petitioner, v. Local Union 6799, United Steelworkers of America, AFL–CIO, et al. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June 14, 1971]

Mr. Justice Brennan, dissenting.

I dissent. The Court acknowledges that 29 U. S. C. § 482 (b), in permitting the Secretary to bring a civil action against the union if his investigation discloses "*a* violation" of § 481, might well mean "any violation whatever revealed by the investigation." *Ante*, at 5. Nonetheless, it concludes that "*a* violation" is limited to "any of the violations raised by the union member during his internal protest," *ibid.*, because the broader interpretation would disregard the congressional purpose in imposing the exhaustion requirement. It is in giving controlling significance to the exhaustion requirement rather than to the clear and primary policy judgment enacted by Congress that the Court, in my view, falls into error.

Wirtz v. *Local 153, Glass Bottle Blowers Assn.*, 389 U. S. 463 (1968), and *Wirtz* v. *Local 125, Laborers' Union*, 389 U. S. 477 (1968), comprehensively analyzed the policy Congress meant to further in enacting the Secretary's enforcement powers under § 482. We said that "Title IV's special function in furthering the overall goals of the LMRDA is to insure 'free and democratic' elections," 389 U. S., at 470, an interest "vital" not alone to union members but also to the general public. 389 U. S., at 475, 483. While we recognized that Congress desired to

further this basic policy with minimal interference with a union's management of its own affairs, we made clear that where governmental intrusion was necessary to realize the vital public policy favoring free and democratic election, "it would be anomalous to limit the reach of the Secretary's cause of action by the specifics of the union member's complaint." 389 U. S., at 483. We accordingly held that "it is incorrect to read the [exhaustion provision] . . . as somehow conditioning [the Secretary's] right to relief once that intervention has been properly invoked." 389 U. S., at 473.

That holding fits precisely the situation before us. Intervention was properly invoked when the dissident union member pursued his complaint through the union's internal procedures. When the Secretary's subsequent investigation uncovered another Title IV violation, surely it was *"a* violation" that Congress meant should also be corrected. Indeed, § 482 (b) provides that if the Secretary's investigation leads him to conclude that there is "probable cause to believe that a violation of this subchapter has occurred" the Secretary should seek in a civil action an order to set the election aside and "to direct the conduct of an election . . . *in accordance with the provisions of this subchapter.*" The new election must, under § 482 (c), be conducted *"so far as lawful* and practicable, in conformity with the constitution and bylaws of the labor organization." These provisions make inescapable the conclusion that Congress authorized the Secretary to ground an action for a new election not only on violations processed by the union member but also on other violations uncovered in his investigation. The Court's contrary construction ignores "the fact that Congress, although committed to minimal intervention, was obviously equally committed to making intervention, once warranted, effective in carrying out the basic aim of Title IV." 389 U. S., at 473.

SUPREME COURT OF THE UNITED STATES

No. 655.—October Term, 1970

James D. Hodgson, Secretary of Labor, Petitioner, *v.* Local Union 6799, United Steelworkers of America, AFL–CIO, et al.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June 14, 1971]

Mr. Justice White, dissenting.

If as in this case, a new election is ordered because a candidate used union facilities when he should not have, the Act directs a new election "under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization." 29 U. S. C. § 482 (c). I take it, then, that the Secretary is under no obligation, indeed forbidden, to follow a provision of the bylaws or constitution that is unlawful. If in proceedings which order a new election, the Secretary discovers in the bylaws or constitution a provision regulating elections that he deems unlawful—such as the meeting attendance rule—but the union insists that it is entirely lawful, does the Secretary simply ignore the provision in holding the election, may he or the union secure a judicial ruling on it or is court action foreclosed and the Secretary required to follow the provision simply because a member in challenging the election failed to attack the meeting attendance rule, probably because it did not affect him?

I agree that if Hantzis' claim of using union facilities had been rejected, a new election could not have been ordered even though the Secretary turned up the meeting attendance rule in his investigation and discovered that

the ballot boxes had also been stuffed. But if the Secretary finds an invalid bylaw that purports to govern a new election that has been validly ordered on a claim which has been exhausted, as in this case, the Secretary appears to have express grounds in the Act, independent of the complaint-exhaustion requirements, to insist that the new election be conducted in accordance with the law and to insist that a court adjudicate the matter if the union stands by its bylaw provision.